

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
JUNE 24TH, 2021**

The regular monthly meeting was held for the Zoning Board of Appeals via Zoom, June 24th, 2021. The meeting began at 6:30 p.m.

The following members of the board were present:

Robert Fahey
Gordon Fine
William Gregory
John Meisterich
Anthony Tripodi

Also present is Kyra Brunner, Host, and Adam Rodriguez, Special Counsel. The meeting was aired on Channel 20 Cablevision and Channel 33 Verizon Fios.

It was announced that the next public hearing would be held July 29th, 2021. Mailings are to be sent from July 6th, 2021 to July 14th, 2021.

NEW BUSINESS

NAKHLA #32/21 This is an application for a special use permit for the renewal of
Property Address: an accessory apartment.
2717 Quinlan St.
Section 27.13, Block 1, Lot 38

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, this item will be handled administratively.

MUSTO #33/21 This is an application for a rear-enclosed porch with a rear yard
Property Address: setback of 37.58' where a minimum of 40' is required as per 300-
2691 Farsund Ct. 21 and Appendix A of the Town Zoning Code. This property is
Section 27.15, Block 1, Lot 58 located in a R1-20 zone.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on June 29th, 2021, and referred to the Building Inspector and Planning Department regarding set backs and lot area requirements. Site Visits will be done by the Board members separately.

DOMENIC #30/21 This is an application to allow a 2nd story addition with a front
Property Address: yard setback of 39.4' and a rear yard setback of 37.1' where both
3251 North Deerfield Ave. require a minimum of 40'. This is an existing house on a lot area
Section 16.20, Block 1, Lot 68 of 18,341 s.f. where 20,000 is required. All 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 Fahey, Fine, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on June 29th, 2021, and

referred to the Building Inspector and Planning Department as to set backs and lot area requirements. Site Visits will be done by the Board members separately.

MASSERMAN #31/21 This is an application for a 2nd story addition with a combined side yard setback of 29'1" where a minimum of 40' is required as per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.
Property Address:
500 Manchester Rd.
Section 17.13, Block 1, Lot 32

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on June 29th, 2021, and referred to the Building Inspector. A copy of the prior variance was requested. Site Visits will be done by the Board members separately.

CONTINUED PUBLIC HEARINGS

ALEK TRIS LLC #10/21 This is an application to remove the condition in a previous ZBA decision that prohibits the subdivision of this lot. If this is removed, a proposed 3-lot subdivision would be applied for. This property is located in a R1-10 zone.
Property Address:
1075 East Main St.
Section 16.10, Block 3, Lot 26

Joel Greenberg, Architect, representing the applicant.

Chairman Fine said that this is a 2 step process to reopen a prior decision. The first step is the Zoning Board has to vote to first reopen the old decision. In order to reopen the old decision it has to be a unanimous vote of all the Zoning Board, if one or more people of the Zoning Board votes no, the application will just be closed. If we move to reopen it then we move to the full public hearing where you can tell us what the basis is to ask us to remove the prior condition. So first off, give us a preview of why you think we should reopen the decision.

Mr. Greenberg said as you probably know from the report that you received from John Tegeder, we did not go before the Planning Board and there were certain requirements that they wanted before they even would allow us to go to the Zoning Board of Appeals. One of the main things is they wanted to make sure that the lots as we proposed, which are 18,000 sq.ft. where 20,000 sq.ft is required, were approved by the Westchester County Department of Health. Several weeks ago, we had testing done, observed by Anthony Cunny from the Westchester County Health Department and both lots were able to pass as far as septic are concern.

Chairman Fine said I know you are telling us what your application is for and what is to be built on the property, but the first hurdle is tell us why we should even reopen the old decision. We have to do that first because the old decision said no further subdivision.

Mr. Greenberg said just to finish the comment, everything was approved by the Westchester County Department of Health and these 18,000 sq.ft. lots were satisfactory to take septic systems for a 4 bedroom house. The reason why we would like to have this removed, is that the previous owner had to agree to no further subdivision. This is the only area of Forest Road that is now basically wooded area as you would see if the Board decides to open the public hearing again. You will see several houses on Forest Road and we are just basically trying to continue that instead of having the gap over there by the curve, just above the curve in Forest Road. We feel that we can adequately show that those 2 lots are viable and I think this will be an asset to the neighborhood. So I would respectfully request that we open the public hearing to discuss the removal of that condition. Chairman Fine asked for the current decision to be read.

Decision of The Yorktown Zoning Board of Appeals. June 25, 1981.

Upon reading and filing the Certificate of Notice, the reports of the Building Inspector dated June 25, 1981, Conservation Board dated June 2, 1981, Tax Assessor dated June 25, 1981 and upon the report of the site committee and upon the testimony offered and received at the public hearing of this application, it is found and determined as follows:

The requested relief, although resulting in a 25% reduction in the area requirements is nevertheless in harmony with the surrounding area and exceeds the size of surrounding lots.

Applicant agreed to stipulate that lot 24 (the front lot) could not be further subdivided.

In order to preserve the open shed and eliminate the dog leg of the lot lines, Board and applicant agreed to rearrange same. Such rearrangement results in lot 24.1 being 14,043 square feet and lot 24.2 being 14,482 square feet.

Applicant presented proof of practical difficulty.

Based upon the above, the Board, after due consideration does grant the variance requested.

Said variance is made expressly subject to the following conditions:

No further subdivisions on the lot facing East Main Street (24) shall be permitted.

Shed shall be restored by July 1, 1982.

Application is amended to rearrange the lot lines leaving on lot of 14,043 square feet (24.1) and one of 14,482 square feet (24.2)

Chairman Fine asked if the lot that you are looking to remove the condition on is lot 24.

Mr. Greenberg said yes.

Chairman Fine said we had a very similar application about a year or 2 ago in the same general vicinity. That was the Spirelli application. He also asked us to remove a condition of a prior decision and consider letting him subdivide a lot. It was the same basic decision, where we said no further subdivision. What the Board did then is we allowed the decision to be reopened and then we heard it and ended up denying it. So, the first step we have to do here is to vote on whether or not we should reopen the decision.

Based upon prior experiences we had where we at least let the applicant state his case, I would move that we reopen the prior decision of the Zoning Board so that the applicant may then give us reasons as to why we should reopen the condition.

Mr. Meisterich said before we get there, did we not do it where we opened it only to look at removing the condition because there was the concept that we could, we did not want to open the opportunity to negate the prior decision in any way.

Chairman Fine said that is what we are doing, we are opening it up only for the sole reason of whether we should remove that condition.

Mr. Tripodi said okay, so there will be a further investigation. Once we open it up then we will make inquires as to whether or not we should remove the condition.

Chairman Fine said correct, but first we have to open it up.

Mr. Fahey said I am having a hard time understanding justification for reopening it. It seemed that the last one was pretty concise as to the reason they wanted to do it. What has changed that we should reconsider.

Chairman Fine said since we have not opened the actual hearing yet, but if Mr. Greenberg wants to respond to that he can.

Mr. Greenberg said again I would hope that the Board would vote to reopen the public hearing and I think once you do, I can explain further exactly why we are doing this, and again on a shared screen you will see some of the situations with the existing houses on Forest Road, and also what was there and that piece on the property that we are trying to subdivide.

Mr. Fahey said all that was there the last time this came up, the same issues were there the first time this came up in 1981. What has changed in the neighborhood, has anything changed that would require us to reconsider.

Mr. Greenberg said yes, like I said the fact that this is open land and again once you see the pictures that was submitted you will see that this street is a very quiet, nice, developed.

Mr. Fahey said it was in 1981 as well, again what has changed.

Chairman Fine said we had in the Spirelli matter, if I remember correctly, anybody can interject if they remember it differently. There was some argument being posed at least that when the first condition was set down was because there were no sewers in the area and then it turned out there were sewers in the area. It turned out that when we did our investigation into that application that that was not actually the case, but that was one of the basis of why the applicant said we should reopen it. Reason being that we can now subdivide land more because the Planning Board said we can do it if we want to put more houses on the lot, it is not really a condition as to a reason why we should reopen an old decision. My personal belief is that if the applicant wants to try and prove his case, I am not saying I am going to agree, but I am okay with opening it up.

Mr. Fahey said I understand.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, the matter is reopened for the sole purpose of reexamining whether or not that condition stating that there be no further subdivision be removed.

Chairman Fine said Mr. Greenberg you can now present your argument as to why you believe we should remove that condition, but keep in mind, solely making an argument as to economic benefits to your client is not necessarily reason why we should remove the condition.

Mr. Greenberg said that is not what I am going to try and explain to the Board.

Mr. Greenberg showed a map of the entire lot he said is with the 2 family house that was approved by the Board several years ago, there is also a cottage. I do not know if you all had a chance to read the report that was sent by the Planning Board through John Tegeder. Let's start by saying this particular area of Forest Road represents approximately between 4 or 3 units per acre. Now if this is approved and again all we are asking for now is for the condition to be approved, we are going back to the Planning Board. The Planning Board may say no lots, 1 lot, 2 lots, but again we just want to have the opportunity to have the Planning Board review it.

If you look at over my layout of the entire area, when you read the bottom is specifically says analysis of all the surrounding lots on Forest Road, the average lot area is 13,000. So the original subdivision of 14,000 was basically above what was required at the time of 20,000 but was about the units per acre, and we are of course asking for 18,000 sq.ft lots. Requirements have change, do not forget this is now exactly 40 years later and I think that the barn that was in pathetic shape back then has been removed and the additional sheds have been removed, and it is basically just a wooded lot. If you look at the lower part of the drawing you will see the quality of the existing single floor ranch type houses which is exactly what we want to do and this is basically not being done to enhance the owner but basically to add 2 houses to an open area that is very well developed and well kept community.

Chairman Fine said so the owner is not going to make any profit from the sale of the homes.

Mr. Greenberg said well I assume he would, yes of course obviously he is going to make money on the houses.

Chairman Fine said but that is one of the reasons he is doing it, apparently it is not for the benefit of the neighborhood. No one in that neighborhood is clamoring for that place to be developed, is what I am saying as far as I know.

Memo from the Planning Board dated, May 26, 2021 states:

The Planning Board reviewed the above referenced ZBA application at their meetings of April 12, 2021, and May 24, 2021. The applicant is proposing a 3 lot subdivision creating 2 new building lots of approximately 18000 SF and a reduced lot of approximately 36000 SF. The subject parcel,

according to the applicant, houses three dwelling units, two in the historic main house and one in the detached 2 story structure behind the main house. The subject parcel was created as part of a three-lot subdivision in 1981 which also created two building lots of approximately 14000 SF each. These building lots were able to be created by virtue of a Zoning Board decision allowing lot sizes less than the required 20000 SF. The variance was conditioned by a restriction disallowing any further subdivision of the remaining 1.65 acre parcel, which is the parcel that is currently under consideration. Subsequent to that decision, and after the 1981 subdivision was completed and built out, a request was made in 1985 for a special permit for a professional office in a residence, which was granted by the Zoning Board. In 1986, an application was filed requesting the creation of a third dwelling unit, utilizing one or both of the barn structures that existed at the time. This application was eventually withdrawn. Sometime since then the main house appears to have been converted to a two-unit structure. The instant application is requesting that the Zoning Board rescind the condition of its 1981 decision which restricted further subdivision of what is now the subject parcel and granting area variances allowing two new lots of approximately 18000 SF each.

The Planning Board requested that the applicant investigate the areas of the proposed new lots for their adequacy in providing necessary sewage disposal infrastructure. The applicant conducted deep-hole tests and percolation tests which were observed by county health department personnel. The testing affirmed that there is the potential to adequately serve two new lots, and the existing dwelling units on a third remaining lot with on-site sewage disposal systems. While no required stormwater treatment was shown or proved out on any of the lots, the Planning Board does not, based on the submitted data, have objections based on these technical considerations.

The Planning Board notes the following with respect to density and community character: The residential area was generally planned at a density of 4.4 units/acre as represented by the R1-10 zoning district. The subdivisions laying out this neighborhood were largely approved and filed prior to 1961. The built-out conditions of Dane Street and Frost Road were slightly less than 4.0 units/acre to 3.0 units/acre, while James Street was built out at less than 2.5 units/acre to 2.1 units per acre. If the instant application is approved, the built-out condition on the subject parcel will be 3.02 units/acre representing 5 dwelling units on 1.65 acres. This is representative of the Dane and Frost neighborhoods. The Planning Board points out, however, that planning of these neighborhoods, completed largely prior to 1961, did not anticipate the 1981 subdivision nor this proposed subdivision, together representing an additional 4 lots and 5 dwelling units over the original planned condition.

The Planning Board, in its November 10, 1986 memo responding to the request to allow a third dwelling unit on the subject parcel recommended against granting such request citing the issue of "overcrowding" (density). Notwithstanding the foregoing analysis, this continues to be a prime consideration of the Planning Board of this and similar requests, and the Planning Board is aware and respectful of prior planning efforts and decisions. As was similarly put forth in the 1986 memo, the Planning Board suggests that if the Zoning Board determines to approve this request, that the following recommendations be considered:

- 1) The Zoning Board consider only the request to rescind the condition restricting further subdivision on the subject parcel. The request for relief from the required lot size of 20000 SF on each of the two new lots is premature and should be set aside until the Planning Board reviews and considers all aspects of the proposed subdivision, including lot size, lot count, lot configuration, building siting and setbacks, etc. The Planning Board will only review the subdivision application if the Zoning Board determines to remove the limiting condition earlier described.

- 2) Limiting further density and/or subdivision of the remaining "original" parcel. Any further density

will have implications to not only the interior neighborhoods of Frost, Dane, and James, but also to the character of the East Main Street corridor. Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, this item was closed and reserved.

CARVALHO #44/20 This is an application to subdivide a lot creating 2 lots under the required 10,000s.f. where a minimum of 20,000 s.f. is required. This property is located in a R1-10 zone.
Property Address: 1681 Summit St.
Section 48.07, Block 2, Lot 9

Adjournment requested by applicant. Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, this item is adjourned.

GRACE #45/20 This is an application to allow a caretaker's cottage as per 300-47 of the Town Code. This property is in a R1-80 zone.
Property Address: 959 Hanover St.
Section 59.07, Block 1, Lot 4

Adjournment requested by applicant. Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, this item is adjourned.

TAMBURELLO #9/21 This is an application for a special use permit for a new accessory apartment.
Property Address: 3061 Oak St.
Section 25.12, Block 2, Lot 5

Not opened. Adjournment requested by applicant.

NEW PUBLIC HEARING

O'NEIL #23/21 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.

Kathleen O'Neil present for the meeting.

Memo from the Assistant Building Inspector dated, June 15, 2021 states:

The subject premises were inspected on June 15, 2021, 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 Fahey, Fine, Gregory, Meisterich, and Tripodi, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years.

SHORT #24/21
Property Address: 1300
Baldwin Rd.
Section 47.16, Block 1, Lot 2

This is an application for a special use permit for the renewal of an accessory apartment.

Mailings and sign certification in order.

Denise Perrigino, applicant daughter, present for the meeting.

Memo from the Assistant Building Inspector dated, June 15, 2021 states:

The subject premises were inspected on June 15, 2021, 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 Fahey, Fine, Gregory, Meisterich, and Tripodi, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years.

AHERN #27/21
Property Address: 2103
Laurel Ct.
Section 37.10, Block 1, Lot 9

This is an application for a special use permit for the renewal of an accessory apartment.

Mailings and sign certification in order.

Lorraine Ahern present for the meeting.

Memo from the Assistant Building Inspector dated, June 15, 2021 states:

The subject premises were inspected on June 15, 2021, 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 Fahey, Fine, Gregory, Meisterich, and Tripodi, the application for renewal of a special use permit for an accessory apartment was granted for a period of three (3) years.

APRUZZESE #22/21
Property Address: 341 Smith
Rd.
Section 17.13, Block 2, Lot 16

This is an application for a proposed deck and existing pool with a rear yard setback of 6' where a minimum of 10' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Mailings and sign certification in order.

David Tetro, Architect, representing the applicant. He said the property is on the corner of Gomer Street and Smith Road. The owner had received a pool permit. They installed the pool but as it turned out the installer had placed the pool a little too close to the property line. I was asked to come in and design a deck for the pool project and when we were doing the layout we realized that there

might be an issue with the zoning requirements here. The application is for a deck for an existing above ground pool with a pool gate and steps leading down to the existing driveway.

Mr. Tetro showed a photo of the property to show the layout, and plans for the project.

Mr. Tripodi asked what is the height of the fence between the properties?

Mr. Tetro said 6 feet.

Mr. Tripodi asked how high is the pool and deck?

Mr. Tetro said the pool is an above ground 54" high pool, the deck is going to be at the level of the pool, two sides are going to have standard 36" high picket style guardrail, and we are planning on putting a solid fence along the side for privacy from Smith Road.

Chairman Fine said that for above ground pools, the walls of the pool act as a fence.

Mr. Tetro said correct.

Mr. Fahey said on the side with the deck closer to the yard, are the people on the deck going to be able to look into the neighbors' yard.

Mr. Meisterich said I was there at the site visit and that is kind of my impression. If you are standing on the pool deck you are basically towering over the privacy fence, so it is a bit of concern there. The privacy fence is quite tall. I would say may even be above 6', which is probably a good think in this case.

Chairman Fine said even if you move deck 4 or more feet back of the fence line you are going to have the same issue.

Mr. Fahey said is there a possibility of screening that, can you put Arborvitae that would hide that.

Mr. Tetro said it is a possibility.

He asked if anyone had the letter from the neighbor.

Mr. Gregory read a hand written note from one of the neighbors' Mary and James Murphy stating they have no objections to the project.

Memo from the Assistant Building Inspector dated, June 1, 2021 states:

I have inspected the property on June 15, 2021 and have no objections in granting relief. The applicant will need a building permit for this work.

Mr. Meisterich read a letter from the neighbor on Gomer Street.

"My name is Annabelle Arguilar, my residence is 3259 Gomer Street here in Yorktown Heights. The reason for this letter is to let you know that I am fully aware and I am in agreement of the size and distance of the pool deck my neighborhood Stephen Apruzzese is in the process of getting approved. He resides at 341 Smith Road property adjacent to me on the left side of my property. Please take this letter in consideration on your decision for the approval.

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, Meisterich, and Tripodi, the application for a variance for a variance was granted for a proposed deck and existing pool with a rear yard setback of 6' where a minimum of 10' 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 deck be built in substantial conformity to the plans submitted.

MARINO #25/21

Property Address: 3716

Oriole Ct.

Section 16.07, Block 1, Lot 22

This is an application to install a pool in the front yard where 40' is required and 13'5" is proposed and an existing fence of 6'6" is in the front side yard where 4'6" is allowed and a shed 6'6" off the property line where 10' is required as per 300-21 Appendix A of the Town Zoning Code.

Mailings and sign certification in order.

Angelo & Merete Marino present for the meeting.

Ms. Marino said basically we live on a corner lot, it appears that it is our back yard but since it is a corner lot, it is a front yard. So we are opting to have the pool 10' where 40' is allowed, but it really is behind. If you look at the pictures we provide, you can see exactly how far off the street it is behind the fence.

The photos of where the pool will be was showed to the Board. It also shows the screening.

Mr. Meisterich said driving by it is screened. It is very good screening for what they are trying to do. I think the fence is also too high.

Chairman Fine said the fence height goes along with what they are looking to do.

Memo from the Assistant Building Inspector dated, June 18, 2021 states:

I have inspected the property on June 15, 2021 and have no objections in granting relief. The applicant will need a building permit and C.O. for the pool.

A fence permit and certificate of compliance were issued for this property. It appears there may have been an error and this variance would correct any errors.

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, Meisterich, and Tripodi, the application for a variance was granted to install a pool in the front yard where 40' is required and 13'5" is proposed and an existing fence of 6'6" is in the front side yard where 4'6" is allowed and a shed 6'6" off the property line where 10' is required as per 300-21 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 current style of fence and screening be maintained.

DISTELHURST #26/21
Property Address: 500
Yorkhill Rd.
Section 37.05, Block 2, Lot 33

This is an application for a proposed accessory structure with a side yard setback of 10.43' where a minimum of 15' is required and a combined side yard setback of 30.64' where a minimum of 40' is required per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Mailings and sign certification in order.

Heike Schneider, Architect, representing the applicant.

Ms. Schneider said we are proposing a 22'x30' accessory structure. The accessory structure is the size of a two bay garage. One part is basically a one bay garage and the second part is going to be a gym and a small home office space. The idea was to bring it fairly close to the house and also connecting to the existing driveway, which of course then if you look at the way the house is design does not really allow us to go all the way into the backyard with the structure. We kept it to a minimum, we really did not want to go further than 22', and we also were willing to overlap it with the existing residence and it will be shorter than 15'. It is conforming with the neighbors.

Ms. Schneider showed the Board the front and side elevation plans.

Memo from the Assistant Building Inspector dated, June 15, 2021 states:

I have inspected the property on June 1, 2021 and have no objections in granting relief. The applicant will need a building permit for this work.

There is a shed under 100s.f. that will need to be removed or relocated. If relocated, no permit is required for the relocation but it must meet the required zoning setbacks.

Ms. Schneider said the shed will be relocated, but Mr. Distelhurst can confirm that.

Chairman Fine said so he is going to move that into compliance with the setbacks.

Mr. Distelhurst said that is correct, I will be happy to move it, no issues.

Mr. Fahey said I was curious as to why the building are not joined and we have an opened breezeway between the two buildings, is there a reason for that.

Ms. Schneider said yes, if we are going back to the floor plan you see the driveway, and the driveway right now goes to pretty much the end. So to put the accessory structure next to the house would really mean that you are cutting down your driveway and also there is an existing garage which is not being used as a garage.

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, Meisterich, and Tripodi, the application for a variance was granted for a proposed accessory structure with a side yard setback of 10.43' where a minimum of 15' is required and a combined side yard setback of 30.64' where a minimum of 40' is required per 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 structure be built in substantial conformity to the plans submitted, and the existing shed be moved into compliance.

DWYER #28/21

Property Address: 524

Yorkhill Rd.

Section 37.05, Block 2, Lot 30

This is an application for a special use permit for a proposed accessory apartment on the 1st floor where it's required to be on the 2nd floor as per 300-38(B)(1) of the Town Zoning Code. (Construction of this apartment has a separate zoning application). This property is located in a R1-20 zone.

Mailings and sign certification in order.

Robert Keeler, Architect, and Joanne Prisco, applicant's mother, present for the meeting.

Chairman Fine said there are 2 applications, first is an application for a special use permit for a proposed accessory apartment on the 1st floor, and 2nd one is to construct an accessory dwelling.

Mr. Keeler said it is very similar to the last application other than the use of the accessory structure and it is actually attached, do not know if it is considered an accessory structure. We are proposing a mother/daughter type addition connected by a breezeway. I believe the house that was on the previous application is very similar where there is a garage and we are very similar in proposing to keep access to an existing patio and therefore the addition will be off the back of the driveway with the proposed 5.2 offset from the side yard.

Mr. Keeler showed the Board the floor plan layout of the existing residence with the proposed 1 bedroom apartment.

Chairman Fine asked where is your parking area for the accessory structure?

Mr. Keeler said there are 2 spaces in the driveway and there is also a garage space.

Chairman Fine asked where is the entrance way to the accessory apartment?

Mr. Keeler said it is in the rear of the existing dwelling attaching to an existing patio.

Mr. Fahey asked do you have a survey for the property showing what is on either side of the property, with the neighbors' property.

Chairman Fine asked how large is this property?

Mr. Keeler said this property is 20,581 sq.ft.

Mr. Keeler showed a photo of the house with the neighboring properties. Also showed where the proposed addition will be located.

Chairman Fine asked if there is a fence between the two properties.

Mr. Keeler said right now there is a chain link fen, and we are proposing to put up a privacy fence.

Chairman Fine said you are not asking for a variance for the fence height.

Mr. Keeler said no.

Mr. Fahey asked is the fence yours or the neighbor's?

Ms. Prisco said I believe the fence is the neighbor's and I believe they have some wood slot parts right at the edge where their property is. There is a chain link fence the whole length of the property

but where their house and pool is I think there is some wooden fence that they put up too. There is also a line of trees there. It is my daughter's house but she is building the apartment for me.

Memo from the Assistant Building Inspector dated, June 18, 2021 states:

I have inspected the property on June 15, 2021 and have no objections in granting relief. The applicant will need a building permit and C.O for this work.

Mr. Meisterich said a couple of meeting ago we had an issue with granting a permit and it says we can only grant one on an existing structure and we held to that, so I think we have a problem here on this one.

Chairman Fine said if you remember John, you are talking about the Tesla house.

Mr. Meisterich said we told him he has to build it and come back.

Chairman Fine said that was for an office not an accessory apartment. Last month we did an application for someone to build an accessory apartment that was not built yet. We had that exact application.

Mr. Meisterich said it says that we may permit the construction of an accessory dwelling with an existing family home, so it is the exact same language and terminology.

Chairman Fine said no, because this is not within, it is an addition.

Mr. Meisterich said that is a whole other problem.

Chairman Fine said they are not building the addition unless they have permission to do it.

Mr. Meisterich said and this is exactly what happened with the Tesla house.

Chairman Fine said no it is not. That was to create a home office. Different kind of application, we had this same application last month for another accessory apartment in an addition that was not built yet.

Mr. Meisterich said well in one case we apply to one way, and another way we apply another way.

Chairman Fine said you are talking about 2 different statute is what I am saying.

Mr. Meisterich said yes I agree it is 2 different statutes, but the wording on them is exactly the same.

Chairman Fine said I do not believe they are, it is not an existing structure because it is not built yet, he has to build the addition. It is not within the structure like within like the office one said.

Mr. Meisterich said alright, so then that brings you to the fact that in our R-80 zoning greater is where you could provide the accessory apartment in the 2nd floor of an accessory structure.

Chairman Fine said hence the variance application.

Mr. Meisterich said but we are in a R1-20 here.

Chairman Fine said that is why they are asking for a variance.

Mr. Fahey said last month I believe it was the Graham application on Hunterbrook Road. This is an application for special use permit for an accessory apartment in a separate structure on the property.

Chairman Fine said yes, that was last month. I do not see it as an issue in this case.

Mr. Meisterich said alright, I mean at least maybe you do not agree with me totally on that but I guess it speaks to substantiality of the variance.

Chairman Fine said yes, there may be a different issue as far as that is concerned. As far as moving forward I do not see an issue with that.

Chairman Fine asked what is the purpose of doing it on the 1st floor as appose to the 2nd floor?

Ms. Prisco said I have been a resident of Yorktown for over 55 years, and as I am getting older I cannot do stairs any longer going up and down the flights of stairs, so my daughter nicely said lets see if we can build you like a granny type cottage or mother/daughter apartment. So it is really because I am going to be able to do the stairs as I get older. That is the only reason it is on the 1st floor.

Chairman Fine said one of the issues I do have with this in keeping in somewhat what John was saying, is that normally if we grant an accessory apartment it is a permit for a period of 3 years, but period running from when. This place is not built yet so it have to be 3 years running from the date that the certificate of occupancy is issued.

Mr. Fahey said would you actually have to do it if you do it from now. When is the expected completion date?

Mr. Keeler said the start of construction would be the end of the summer, this fall, so I would say mid to late winter, early spring depending on the winter that we have.

Chairman Fine said I do not see the purpose of the issuance, telling them they have 3 years from now.

Mr. Fahey said they would just have to come back.

Chairman Fine said they cannot occupy until there is a certificate of occupancy anyway. Why cut it short, it is not like we are experimenting. We have to see how it goes.

Mr. Meisterich said that is why you are supposed to wait until the building is built to issue the special use permits, but I think that the size of this accessory building is potentially kicking in the 80% coverage.

Chairman Fine said that is not what the variance is for.

Mr. Meisterich said right, but just looking at the plan that I am looking at.

Chairman Fine said we cannot make up what this application is for, the Building Department tells us what variance is necessary, they do not list the coverage area, they do not list the coverage problem.

Mr. Keeler asked is that the accessory coverage or the total coverage?

Mr. Meisterich said you have a shed and this accessory building, it cannot cover more than 80% of the footprint of the main building, and just looking at your plans I think you are there, if not exceeding it. And Gordon is right the Building Department should have flagged that if that is the case, this is an accessory structure because you are connected with the breezeway, that is written right in the code that that does not count as making it part of the main structure, and this becomes a very large accessory structure with the footprints with the 2 houses.

Chairman Fine said neither Building Department memo discusses the coverage issue.

Mr. Gregory said John makes a valid point in terms of the coverage because it is still an accessory building even though it may be attached by a breezeway.

Do you know how big is the footprint of the residential structure is right now?

Mr. Meisterich said I am looking at the scale drawing and I think that there is also a shed on the property that is not on this picture.

Ms. Prisco said I do not think there is a shed.

Chairman Fine said there is a shed there, you can see it on the top of the photo.

Mr. Meisterich said it might be the neighbors then.

Mr. Tripodi said the square footage would have to be 1125 in order for the 900 sq.ft. addition to fall within the 80%.

Mr. Meisterich said it is 1½ story house so it is not just the living square footage.

Mr. Tripodi said it is 2½ story. You have the square footage on 2 different levels, so I think the square footage in the main house is probably going to exceed that 1125.

Mr. Meisterich said the way the ordinance is it is the footprint of the main building not the square footage of the living space of the main building.

Mr. Keeler said when I went through this with Joe, we had that there were 33% of the total square footage of the existing structure. We did not discuss the footprint area.

Mr. Gregory said probably the reason for that was because this particular section of the ordinance applies to an accessory building, and again because you will be connecting that building to the main building by a breezeway, it is still considered an accessory structure. 33% really has nothing to do with the size of the living space in the main building, but what we are talking about here is not that but really coverage.

Mr. Keeler said the principal building is 1177 sq.ft.

Mr. Gregory said so does that satisfy the 80% requirement.

Mr. Meisterich said I do not know that we have gone to much detail on this one, the deck I guess does not really count for anything in this, it is usually an accessory structure, the ordinance reads, accessory building coverage. I do not think the deck counts at all hopefully. But I think in the Google

I do see a shed or what looks like a shed there.

Chairman Fine asked is there a shed on the property because the Google photo could be old too.

Ms. Prisco said no, there is no shed.

Mr. Keeler said I do not think there is a shed, if that is an outdated image I would typically note that on my plan whether it is on the existing survey.

Mr. Meistrich said on the accessory building, the footprint was 36x25 or something.

Mr. Keeler said 36x25.

Mr. Tripodi said which is 900 sq.ft as reflected on the plan.

Mr. Meisterich said you are good by 36 sq.ft..

Mr. Fahey said going back to what you were saying John, I had an opportunity and read the Graham application and that accessory apartment was to be built into an existing building. It says here, application to construct an accessory apartment in a separate structure on the property.

Chairman Fine said it was a structure they were remodeling, I think.

Mr. Fahey said right, but the structure was already there, just a clarification. Was not sure if that has any bearing or not.

Mr. Meistrich said I think it does. If you look at those 2 paragraphs with the dwelling unit not being permitted in a R1-20 zone as a separate building at all, it also says that even in the zone that it is allowed in by code. The accessory is supposed to comply with all these setback requirements, it is not an existing building, we do not comply with the setbacks requirements, we are not in a zone that specifically laid out as it should not be there, at least at a minimum it is a very substantial set of variances, or it is arguable that we are not in an existing building here to even grant it just yet.

Mr. Tripodi said I have a question, referring back to the Google picture, there is a lot of trees on the side of the property with the adjoining neighbor, are those trees going to remain after the structure is put up and continue to serve as screening.

Ms. Prisco said the big trees, the native trees are going to be removed and the line of screening trees would say, and will be added to going down further.

Mr. Tripodi asked where are they located to in conjuncture with the proposed structure.

Mr. Keeler showed on the Google photo where the trees would be removed and replaced, and which will remain.

Mr. Tripodi asked what is the height the improvement going to be?

Mr. Keeler said we are proposed 15'9".

Chairman Fine said how does that compare to the current roof line.

Mr. Keeler said the existing structure is plus or minus 28' to the ridge.

Chairman Fine said that is 13' shorter.

Mr. Keeler said correct.

Memo from the Assistant Building Inspector dated, June 15, 2021 states:

The subject premises were inspected on June 15, 2021 and I have no objections in granting this special use permit.

The applicant should be advised that a building permit and Certificate of Occupancy must be issued for the construction and use of the accessory dwelling.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, the application for a special use permit for a proposed accessory apartment on the 1st floor where it's required to be on the 2nd floor as per 300-38(B)(1) of the Town Zoning Code. (Construction of this apartment has a separate zoning application), was granted for a period of three (3) years.

DWYER #29/21
Property Address: 524 Yorkhill Rd.
Section 37.05, Block 2, Lot 30

This is an application to construct an accessory apartment dwelling with a side yard setback of 5' where a minimum of 15' is required, a combined side yard setback of 25.69' where a minimum of 40' is required and to allow the accessory apartment to be on the 1st floor where its required to be on the 2nd floor as per sections 300-21,300-38(B)(1) and Appendix A of the Town Zoning Code. This property is located in a R1-20 zone.

Mailings and sign certification in order.

Joanne Prisco, applicant mother and Robert Keeler, Architect, present for the meeting.

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, Meisterich, and Tripodi, the application for a variance was granted to construct an accessory apartment dwelling with a side yard setback of 5' where a minimum of 15' is required, a combined side yard setback of 25.69' where a minimum of 40' is required and to allow the accessory apartment to be on the 1st floor where its required to be on the 2nd floor as per sections 300-21,300-38(B)(1) 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 it be built in substantial conformity to the plans submitted.

CLOSED AND RESERVED

ALEK TRIS LLC #10/21
Property Address:
1075 East Main St.
Section 16.10, Block 3, Lot 26

This is an application to remove the condition in a previous ZBA decision that prohibits the subdivision of this lot. If this is removed, a proposed 3-lot subdivision would be applied for. This property is located in a R1-10 zone.

Mr. Fahey said the only thing that perhaps is an influence at this point is that the barn that was there back then is no longer there, the barn is gone and that was a substantial structure, that is not there anymore. Does that have any bearing on what we are looking at here?

Chairman Fine said I do not know if it does or not, because the original decision does not really talk about that in a sense of that was the basis for the decision. They talk about it somewhat in the decision, but I have not heard anything that changes what was known then.

Mr. Fahey said the guy came back in 85/86 and they were going to do some type of home office in the barn and it is the same concern with septic were being address then, the application was withdrawn and now that barn does not even exist. Does any of that bear into it.

Chairman Fine said it is what you believe has bearing. To me I do not see what differentiates this application from the one we denied a couple of years ago. We have to hear them on their own merits but we have to look at what was done in the past too.

Mr. Fahey said I agree.

Mr. Tripodi said I am incline to agree with Gordon on this. I think the principal stare decisis applies. The decision was made on this, there has got to be a reason. You have to stay with the decision, there cannot be flexibility. Even though I agreed to some others in the past, I just do not see any benefits to the neighborhood in sticking 2 more houses into the neighborhood. I have been by there and the green belt is kind of charming.

Chairman Fine said I also have an issue with the argument of giving them a chance to present it to the Planning Board because that really takes everything out of the Zoning Board's hands.

Mr. Meisterich said another thing is it is a proposal but you are looking at building more substandard

lots, no matter what.

Mr. Fahey said yes, the justification okay 40 years ago. No it is not okay, we are trying to get away from that.

Mr. Meisterich said the only thing I could even think would be appropriate is if someone wanted to review the minutes of why these conditions were put in but I think we tried to go down that road on the last similar application and we could not even find the minutes.

He certainly did not present anything that said this is why they did it back then and this is why that does not apply anymore. That is the only thing that would sway me unfortunately. It is not necessarily a terrible concept.

Chairman Fine said I do not doubt he is planning on building a very nice building, but that is not the point.

Mr. Gregory said his problem is that there got to be some kind of legal argument, obviously if you want to consult the town attorney and find out what standards there are, we could obviously do that, but my sense is there got to be some kind of real legal argument that got to be presented in order to overcome a decision by a prior Board and what I have heard from the applicant is one that basically says that there is lots with houses on it that are similar size. Although we know that basically the subdivisions that were laid out, were laid out in 1961. The Town Board changed the requirements for lots 20,000 in R1-10 zone in 1971. So the lots that were presented on Frost Road right now, unless they were done under some flexibility or density standard, would not survive under the current zone.

Chairman Fine asked Special Council, Adam Rodriguez if we are off base in our thinking.

Mr. Rodriguez said I do not think so, ultimately when you seek relief from a decision there has to be some intervening facts, intervening change in law, intervening change in circumstances that justifies the departure. I think you guys are hitting the nail on the head. You are going to set yourselves up for challenges to these things everywhere, and then you are going to be in a box where there is going to be a precedent that had no significant rational to distinguish it from any other. So you are going to have a hard time distinguishing from any other application, and your hands, as a practical matter, probably be tied. There is law on that, that is for sure.

Mr. Tripodi said there is a definite lack of any compelling reason to open it up and I think without that my inclination is to vote no against opening it up.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, Meisterich, and Tripodi, the application is denied to remove the condition of the previous Zoning Board of Appeals decision that prohibits the further subdivision of this lot at 1075 East Main Street.

Recording Secretary, Glenda Daly
Meeting adjourned at 8:13pm
Happy Zoning!