

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
MAY 26TH, 2022**

The regular monthly meeting was held for the Zoning Board of Appeals, Town of Yorktown, at the Yorktown Town Hall, 363 Underhill Avenue, Yorktown Heights, New York, May 26th, 2022. The meeting began at 6:30 p.m.

The following members of the board were present:

Robert Fahey
Gordon Fine
William Gregory
John Meisterich

Also present is Kyra Brunner, Legal Secretary, Adam Rodriguez, Special Counsel, and Luciana Haughwout, Town Board Liaison.

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 23rd, 2022, site visits are scheduled for June 18th, 2022. Mailings are to be sent from May 31st to June 8th, 2022.

NEW BUSINESS

RODRIGUEZ #28/22 This is an application for a special use permit for a new accessory apartment.
Property Address:
898 Parkway Pl.
Section 16.11, Block 1, Lot 26

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on June 23rd, 2022, Site Visit on June 18th, 2022, and referred to the Building Department.

SANSONE #29/22 This is an application to allow an accessory structure with a height of 19'6" where 15' is permitted and for a front yard setback of a corner lot of 24' where 40' is required as per 300-21 and Appendix A of the Town Zoning Code.
Property Address:
69 Sheila Ct.
Section 17.14, Block 3, Lot 1

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on June 23rd, 2022, Site Visit on June 18th, 2022, and referred to the Building Department

CHANG #30/22 This is an application for a renewal of a special use permit for an accessory apartment.
Property Address:
1480 Inspiration Rd.
Section 16.17, Block 4, Lot 15

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

LONG #31/22 This is an application to allow the reconstruction and enlargement of an existing deck to legal non-forming structure as per section 300-173 of the Town Zoning Code.
Property Address:
1680 Mogul Dr.
Section 25.12, Block 2, Lot 81

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on June 23rd, 2022, Site Visit on June 18th, 2022, and referred to the Building Department

KIPPERMAN #32/22 This is an application for a deck with a side yard setback of 8' where 10' is required as per section 300-21 and Appendix A of the Town Zoning Code.
Property Address:
3221 N. Deerfield Ave.
Section 16.120, Block 1, Lot 44

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on June 23rd, 2022, Site Visit on June 18th, 2022, and referred to the Building Department

CONTINUED PUBLIC HEARINGS

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:
Summit St.
Section 48.07, Block 2, Lot 9

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

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

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

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.

SHAWARBY #48/21 This is an application for a special use permit for a new accessory apartment.
Property Address:
3570 Ellis St.
Section 15.15, Block 1, Lot 1

Memo from the Assistant Building Inspector, dated May 23, 2022 states:

The applicant has applied for a building permit to legalize the basement for non-habitable space as it does not meet the NYS Building Code. At this time I have no objection for the application for a special permit for one accessory apartment to move forward

Chairman Fine said we have had a lot of testimony on this application. There were some complaints from neighbors that dated back to incidents I believe that happened some time ago, not sure how recent they were, and correct me if I am wrong Mr. Shawarby, but you had owned the property, sold the property, and took the property back in 2017.

Mr. Shawarby said yes.

Chairman Fine said and since 2017 you and your family have been residing at that property continuously.

Mr. Shawarby said yes.

Chairman Fine said and when you took over the property again in 2017, I noted from what you submitted to the file, that you had moved to evict the problem tenants.

Mr. Shawarby said exactly.

Chairman Fine said so since that time have there been any other tenants in the unit.

Mr. Shawarby said no.

Chairman Fine said so now it has been empty since you evicted the prior tenants.

Mr. Shawarby said yes.

Chairman Fine said there were some concerns from the neighbors that possibly you had permitted the behavior of the tenant that were there to go on. I know your position was that you were not there. It was the period you were not the owner of the property, it predated 2017, or may have come back into play during 2017 while you were trying to evict them. In any event, they were not your tenants.

Mr. Shawarby said exactly, when I took it up in 2017 there were still there, I had to spend over a year trying to evict them. There were numerous problems, the police were there every other week.

Chairman Fine said I believe that last time you were here, you basically admitted that there were problems there and you came back and tried to rectify them.

Mr. Shawarby said correct.

Chairman Fine said the accessory apartment law in Yorktown pretty much states that if you meet the criteria in the accessory apartment code then the Board may grant the permit. We obviously take into account any complaints, any problem of that nature. I do not know what the rest of the Board feels, but I think Mr. Shawarby has demonstrated that he has cleared up any problems that existed in good faith. This is a permit application it is not a variance, which means if it is granted it is not permanent, it is a permit that has to be renewed so if there are any problems it always could be addressed at a future date, it is not once it is granted we are done.

Mr. Fahey said since we have had problems in the past, do we have to abide by the three (3) years, can we shorten that.

Chairman Fine said I think we have the ability to shorten, I do not know thou the timing it may take to rent out the property and have somebody move in if you grant it only for a year, if you are going to have a proper feel.

Mr. Gregory said where are you in terms of the issues.

Mr. Shawarby said he requested an engineer and develop a floor plan, we provided that. Then I filed for building permit, that is in the works right now.

Mr. Gregory said and basically your intention is to remove he living space from the basement.

Mr. Shawarby said yes, just to use it for storage.

Mr. Gregory said and the accessory apartment that we are dealing with presently exist.

Mr. Shawarby said the accessory apartment has nothing to do with it, the basement was just my son was there when he was home.

Mr. Gregory said but as part of the overall application, the accessory apartment that we are dealing with exist presently.

Mr. Shawarby said yes.
 Mr. Gregory said I guess what I am asking is, is it occupied presently.
 Mr. Shawarby said no, I am there myself. I used it as an office right now.
 Mr. Gregory said do you intend to occupy it in the near term.
 Mr. Shawarby said yes. If I may need to, right now I am using it really for myself. I just want to put it on the record that this accessory apartment had been approved before, many years ago and had been inspected many times and as a result the taxes have gone up. To this date I have not requested for the taxes to be reduced, so I have been paying the taxes on the accessory apartment since many, many years ago.
 Mr. Meisterich said I was looking at the file. I was a little confused too with the basement, but you are basically just making that, not the apartment.
 Mr. Shawarby said it has nothing to do with the apartment.
 Mr. Meisterich said so the apartment is on the first floor, I guess.
 Mr. Shawarby said when you go to the house it is on the left, it used to be a garage it was totally renovated.
 Mr. Meisterich said I am looking at the diagram that you included, is there a kitchen in the apartment because it is not on the diagram, is it open space.
 Mr. Shawarby said yes, it is open but there is no stove maybe that is why they did not indicate a kitchen. There is no stove because I am living there myself, and I have no need for a stove.
 Mr. Meisterich said right now until that stove is there it is not an accessory apartment anyway until that is installed.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine, Gregory, and Meisterich, the application for a special use permit for a new accessory apartment was granted for a period of two (2) years instead of three.

ELIAZER #14/22 This is an application to legalize a 6' high fence in two side yards where a maximum of 4.5' is permitted as per 300-13F of the Town Zoning Code.
Property Address:
3761 Chesterfield Dr.
Section 15.08, Block 2, Lot 70

Application not present. Not opened.

GENAO #21/22 This is an application to allow construction of a front porch with a front yard setback of 23' where 30' is required as per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-10 zone.
Property Address:
3197 Parmly Ct.
Section 25.07, Block 1, Lot 23

No mailings. Not opened.

CLIFFORD #22/22
Property Address:
1625 Central St.
Section 48.07, Block 2, Lot 28

Michael Grace, Attorney, representing the applicant.
 Mr. Grace said there were some nice ladies who were very concerned about it last time that we were here. He is going to meet with them, he got the ability to annex another 7500 s.f. I think or something like that to add to the property to make it a less conforming. We advised him that he really need to

either placate the neighbors, Gordon you were very firm about where you were. Chairman Fine said the problem is this affect more than just this lot. There are other lots that can come in with the same application and we have denied some of these previously, so do not want to set a precedent again.

Mr. Gregory said I believe the property has also got a special permit for the accessory apartment. Chairman Fine said that was granted in January 2021.

Mr. Grace said the owner and I are very cognizant of what the issues are. When I was here last time, taking a look at it, it does not seem to be based upon the fact that 3 sides of the property abut roads. It is not too far field and it certainly will be in keeping with the character of the neighborhood. I think that if you get these other lots that may not be the case, but this lot seems to be one that would be fairly benign, but there are issues and I suggest he at least invest in the issues that the neighbors had. I think quite frankly if he can get over that hurdle and we will address the next couple of hurdles.

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

**WALLACK FAMILY LTD
#23/22**

**Property Address:
1549 Jacob Rd.**

Section 36.13, Block 1, Lot 14

This is an application to allow construction of a new barn (accessory building) with a height of 30'2" where 15' is allowed as per 300-21 and Appendix A of the Town Zoning Code. This property is located in a R1-40/R-160 zone.

Michael Grace, Attorney, representing the applicant.

Mr. Grace said the neighbors had concerns about where it was on the site, as did the Planning Board, and it came up so quickly we did not have the actual site plan to where it was located, we have that at this point but he wants to meet with the neighbors directly.

Mr. Fahey asked where is he going to put it on the property.

Mr. Grace said I did not bring it in. It is in the middle of where all these other buildings are, it is not too far from what was already improved on the property. I know you had an inquiry of what it is going to be used for, at this point it is just storage.

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

NEW PUBLIC HEARING

**SMITH #24/22 Property
Address:
2477 Pine Grove Ct.
Section 36.06, Block 1, Lot 10**

This is an application to reconstruct and expansion of a garage with one side yard of 10.74' where 15' is required and total of two side yard 30.86' where 40' is required as per 300-21 and Appendix A of the Town Zoning Code.

Mailings and sign certification in order.

David Tetro, Architect, representing the applicant.

Mr. Tetro said currently the left side of the house they have your typical 11ft. wide garage, and they are outgrowing the house so instead of selling they want to add a master suite onto the project and make the garage a little bigger. So in doing so we are going over the setback line and we are looking for a side yard variance. We are also adding a front portico to the project but that is within the setback limits, we are not asking for a variance on the front. So it is going to be an enlarge one (1)

car garage with storage and then a master suite above.

Mr. Meisterich said not that this is too germane but the elevation of that master you have to step up. Mr. Tetro said it is your typical side by side split, so the garage is not on any of the equal levels, you are stepping down from the garage into the basement. So what we are doing is we are taking the existing end bedroom and running the hallway wall through it and create a set of stairs coming up into the new addition.

Memo from the Assistant Building Inspector, dated May 23, 2022 states:

I have inspected this property on May 23, 2022 and found no apparent violations. I have no objection granting relief for requested variances. The applicant will need a building permit and certificate of occupancy for this project.

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 reconstruct and expansion of a garage with one side yard of 10.74' where 15' is required and total of two side yard 30.86' where 40' is required as 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 addition be built in substantial conformity to the plans submitted.

SACCOMANNO #25/22

Property Address:

3566 James St.

Section 16.10, Block 4, Lot 43

This is an application to allow the installation of 6' fence located in the side yard continuing into the rear yard where 4'6" side yard is permitted as per 300-13F and Appendix A of the Town Zoning Code.

Mailings and sign certification in order.

Michael Saccomanno present.

Memo from the Assistant Building Inspector, dated May 23, 2022 states:

I have inspected this property on May 23, 2022 and found no apparent violations. I have no objection granting relief for requested variances. The applicant will need a final inspection once fences are installed.

Chairman Fine asked where on the property is the fence going to run specifically.

Mr. Saccomanno said it will be along the northern property line adjacent to the neighbors' driveway. The driveway runs the length of the house and even slightly back. So for an interest of privacy into the home as well as the backyard patio which does appear on the survey. The house is approximately 12.5' away from the property line, the patio is approximately 15'. My neighbor Mr. Chase does operate a small lawn care business out of that house, so there is a lot of movement of individuals as well as some equipment.

Chairman Fine said so the fence you want to put up is on the side of your house, between you and your neighbor but it is going to start at the front of your house, not the front lawn, but the front of the house structure itself and go back to the back of the property.

Mr. Saccomanno said that is correct.

Chairman Fine said it is going to work its way back around.

Mr. Saccomanno said not, it is going to be a single unit for 104'.

Chairman Fine asked what the fence is going to be made of.

Mr. Saccomanno said white vinyl.

Mr. Fahey said a two sided fence, their side and your side will be the same.

Mr. Saccomanno said yes.

Chairman Fine asked if anyone in the audience have a comment.

Gail Grace, neighbor, came to the podium. She said we sort of have a little bit of a problem with it. Back in the 50's when these houses were built there was no side line, like the garage did not have to be 10' from the boundary. Our garage is only 5' from the boundary. So if he puts up this fence down pass the garage it is going to shave the garage, we are going to have nothing but green mold on both the fence and the garage. Now there will be no room to even clean the garage.

Chairman Fine said you could go between the garage and the fence, you still have room.

Ms. Chase said okay, but you got to hose the thing, if you damage the fence who fault is it.

Chairman Fine said but if he put up a 4.5' fence, which he is allowed to do, you would still have the same issue.

Ms. Chase said yes, I am not talking about that, I am talking about the fence.

Chairman Fine said he is allowed to put up a fence with or without a certificate of occupancy.

Mr. Meisterich said just looking at the plan also, back where your garage is I believe he is allowed to have a 6' fence there because that is his rear yard.

Ms. Chase said he is but it is only going to be 5' off the garage.

Chairman Fine said it is permitted.

Ms. Chase said I have a question about that, I did some research and a fence is considered a structure.

Chairman Fine said we have a specific code as it pertains to the fences, and all the code says it have to meet a certain height.

Ms. Chase said but you also have a code that says structure have to be 10' off the property line.

Chairman Fine said not fences.

Ms. Chase said you are contradicting yourselves.

Mr. Fahey said that would make no sense.

Chairman Fine said normally a lot of people sometimes would put a fence up a little bit of the property line so they can service it from the other side, but do not see it 10' off the property line because anytime you go to sell your property your property you are going to see something from the title company saying you have now loss possession of everything on the other side of the fence, so it is not part of the law.

Ms. Chase said so now going back to where they want to put 6' all the way up to the side of the house.

Chairman Fine said keep in mind they are allowed 4.5'.

Mr. Meisterich said they are even allowed to do 6' back by the garage and 4.5' on the side.

Ms. Chase said okay, so now you want 6' up to the front of the house, at that point our driveway is only 2-3 feet off the property line.

Chairman Fine said but there is no garage just the driveway.

Ms. Chase said it is just driveway, you are missing my point. We have had a lot of winds lately, that fence blows over and hit one of our vehicles.

Chairman Fine said that is his problem.

Ms. Chase said okay, let say we park in the garage.

Chairman Fine said if anyone put up a fence, they have the same issue. He is permitted to put up a fence, you would have the same issue whether it is 4.5' high or 6' high. Why would the issue change, he can put a 4.5' fence up without even asking us.

Mr. Meisterich said his fence could go 4.5' throughout your driveway and step up to 6' to the back that would completely be legal nobody would be here, but you have to ask yourself the question like aesthetically would you prefer that because that is going to look quite strange actually to go 4' and step up to 6'.

Ms. Chase said it is going to look quite strange. When we first moved to our house, we thought it was great, all the neighbors got along, not so anymore. All the neighbors stick by themselves, they do not want to talk to people. I was just over there yesterday because his grandmother came home from the doctor and she was up on the thing, I walked over there to talk to her. This stuff we have done since I have moved there, to have a 6' fence now you would not even see. Somebody could

easily if he have a 6' fence, they could hide behind that fence and when my son, or grandson, my daughter-in-law come out of the house somebody could come around that fence and grab them, you cannot see.

Chairman Fine said you could do that with 4.5'.

Mr. Meisterich said the scenario that we really have to consider, I am not saying that is not something to worry about, but it is really about the character of the neighborhood, the aesthetics, the impacts and negative impacts. We are not looking at whether more crimes could be committed because a 6' fence is there.

Chairman Fine said the point I am trying to make is with or without us he could still put the fence up in the same place.

Ms. Chase said I almost think the Town should have something in that case, God forbid our garage catches fire, the firemen are not going to have egress to get to the side of that thing.

Mr. Meisterich said your garage is the non-conforming structure.

Ms. Chase said no it is not, back in the 50's when it was built plus we had a variance.

Chairman Fine said you had a variance which means it was non-conforming.

Ms. Chase said but we did not have it, the people that sold it to us had to get a variance.

Mr. Meisterich said but you are saying we got a variance but my neighbor should not be entitled.

Ms. Chase said we did not need to get the variance, it was grandfathered in.

Mr. Fahey said we understand that.

Mr. Meisterich said you have gotten whatever the legal scenario is, an allowance to have your garage closer to the property line than would be legal today. But you are not willing to extend that to your neighbor. To say why do you have greater kind of rights than he does.

Chairman Fine said not to mention where the garage is, he can have 6'.

Ms. Chase said I know that, but I am saying I think the Town should change a little bit of laws on the fencing.

Chairman Fine said we do not write the laws; we only enforce them.

Mr. Meisterich said it is not going to be realistic to have the Town say fences have to be 10' off the property line. That is counter to the purpose of the fence.

Ms. Chase said not necessarily. Who maintains the side of the fence on our yard?

Chairman Fine said he does, it is his fence.

Ms. Chase said so how is he going to maintain it.

Chairman Fine said it is his problem to take care of it.

Ms. Chase said we got used, he used us to get his patio in, now he wants to put up a big fence. It is not right. I do not think they should have a 6' fence up the side of the house.

Chairman Fine said I understand what you are saying.

Mr. Saccomanna said in reference to Ms. Chase comment regarding the use of their driveway, she is correct in saying that. I did use a dump truck.

Chairman Fine said we are not concern with that, neighbors use neighbors' properties.

Mr. Saccomanna said it was done by asking permission of the current resident of that address and at the time permission was granted and so I was permitted to use some of that space at the time.

Chairman Fine said honestly that is not a consideration of ours. We are looking at the application itself, not how neighbors happen to get along. Because either one of you could move and the fence is still there, unless whoever owns your property decide to take it down.

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, and Meisterich, the application for a variance was granted to allow the installation of 6' fence located in the side yard continuing into the rear yard where 4'6" side yard is permitted as per 300-13F 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 with the condition that the fence is to start at the area between the neighbors, but the front of the Saccomanno home, not the front yard, but the front of the

structure going in a straight line back. It is to be constructed with white vinyl with the good side on both sides.

RIEHM #27/22
Property Address:
1498 Dover St.
Section 14.08, Block 2, Lot 38

This is an application for an addition that requires a variance for a front yard of 35' where 40' is required as per 300-13G for a corner lot, a variance for two side total of 55.25' where 40' is required as per 300-21 and Append A of the Town Zoning Code, and for a fence with a height of 6.5' in a front yard where 4.5' is required as per 300-11G of the Town Zoning Code.

Mailings and sign certification in order.
David Tetro representing the applicant.
The Board and Mr. Tetro discussed what correct variance is needed.

Memo from the Assistant Building Inspector, dated May 23, 2022 states:
I have inspected this property on May 23, 2022 and found no apparent violations. I have no objection granting relief for requested variances. The applicant will need a building permit and certificate of occupancy for this project.

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 an addition that requires a variance for a side yard of 35' where 40' is required for a corner lot. And as far as a variance for two sides totaling of 55.25' where 40' is required, that is not required. And in addition, add a fence in the side yard on the Marcy side as well as the opposite side yard of a height of 6.5' where 4.5' is permitted. 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.

Recording Secretary, Glenda Daly
Meeting adjourned at 7:21pm
Happy Zoning!