

MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
July 28th, 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, July 28th, 2022. The meeting began at 6:30 p.m.

The following members of the board were present:

Gordon Fine
William Gregory
John Meisterich

Also present is Kyra Brunner, Legal Secretary, and Steve Fraietta, Assistant Building Inspector.

The meeting was aired on Channel 20 Cablevision and Channel 33 Verizon Fios.

It was announced that the next public hearing would be held September 22nd, 2022, site visits are scheduled for September 17th, 2022. Mailings are to be sent from August 29th to September 7th, 2022.

NEW BUSINESS

**YORKTOWN OFFICE
WAREHOUSE #42/22
Property Address: 2985
Navajo St.
Section 6.18, Block 1, Lot 29**

This is an application to renew an existing special use permit for a day care facility per section 300-53 of the Town Zoning Code.

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

**BIEBEL #43/22
Property Address: 1331 Echo
Hill Path
Section 47.19, Block 1, Lot 20**

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

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

**TORNATORE #44/22
Property Address: 1049 E.
Main St.
Section 16.10, Block 3, Lot 23**

This is an application to allow a front yard setback of 18.256ft where 30ft is required as per section 300-21 and Appendix A of the Town Zoning Code.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department.

ALIHAJDARAJ #45/22
Property Address: 830
Barberry Rd.
Section 26.12, Block 1, Lot 14

This is an application to legalize a shed with a side yard setback that is 3.5ft where 10ft is required as per section 300-21 and Appendix A of the Town Zoning Code

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department.

RODRIGUEZ #46/22
Property Address: 898
Parkway Pl.
Section 16.11, Block 1, Lot 26

This is an application to allow a floor area of 1300 square feet where 800 square feet is the maximum allowed for an accessory apartment as per section 300-38B of the Town Zoning Code.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department.

JENNINGS #47/22
Property Address: 79
Somerston Rd.
Section 17.10, Block 1, Lot 3

This is an application to allow construction of an attached garage with a side yard setback of 8.5ft where 15ft is required, where a total of two sides is 22.3ft where 40ft is required, and a front yard setback of 35.09ft where 40ft is required as per section 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 Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department.

WILLIAMS #48/22
Property Address: 2086
Defoe Ct. 2

This is an application for an addition with a rear yard setback of 21.69ft where 30ft is required as per 300-21 and Appendix A of the Town Zoning Code.

Section 37.18, Block 2, Lot 1

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department.

SAVASTANO #49/22
Property Address: 950
Starlight Rd.
Section 59.10, Block 2, Lot 14

This is an application for a raised 2nd story of a non-conforming structure with a front yard setback of 22ft where 75ft is required and a lot area of 15,000 sq ft. where 80,000 sq ft. is required as per section 300-21 and Appendix A of the Town Zoning Code.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department.

DINEEN-CAREY #50/22
Property Address: 2090
Crompond Rd.
Section 3714, Block 2, Lot 8

This is an application to allow a 18 sq ft. wall sign on the side of the building where 4 sq ft. is allowed as per section 300-21 and Appendix C of the Town Zoning Code.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department, ABACA and Planning Board.

O'DONNELL #51/22
Property Address: 1405
Turus Ln.
Section 16.17, Block 1, Lot 48

This is an application to allow a 6'6" fence located in the front yard where 4'5" is permitted as per section 300-13F and Appendix A of the Town Zoning Code.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item was scheduled for a Public Hearing on September 22nd, 2022, Site Visit on September 17th, 2022, and referred to the Building Department.

CONTINUED PUBLIC HEARINGS

CARVALHO #44/20
Property Address:
1681 Summit St.
Section 48.07, Block 2, Lot 9

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.

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

GRACE #45/20
Property Address:
959 Hanover St.
Section 59.07, Block 1, Lot 4

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.

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

TAMBURELLO #9/21
Property Address:
3061 Oak St.
Section 25.12, Block 2, Lot 5

This is an application for a special use permit for a new accessory apartment.

Not opened. Board request letter to be sent to the Building Department for follow up.

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

This is an application to allow the sub-division of an existing single-family lot into two nonconforming lots. One fronting on Central Street and one fronting on Summit Street.

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

**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.

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

**RODRIGUEZ #28/22
Property Address:
898 Parkway Pl.
Section 16.11, Block 1, Lot 26**

This is an application for a special use permit for a new accessory apartment.

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

NEW PUBLIC HEARING

**DINEEN-CAREY #33/22
Property Address:
2090 Crompond Rd.
Section 37.14, Block 2, Lot 8**

This is an application to renew a special use permit for the Day Care Facility per 300-53 of the Town Zoning Code. Premises is in a R1-20 Zone.

Mailings and sign certification in order.

Kathleen Dineen-Carey and Mini Dineen-Carey present for the meeting.

Chairman Fine asked, any changes since the last application.

Mini Dineen-Carey said some changes.

Chairman Fine said tell us what they are.

Ms. Dineen-Carey said it is the exact same site plans that you guys approved about 3½ years ago. The addition on the back of the building finally finished. It is all done so this is just the renewal of our regular special use permit.

Chairman Fine said did you increase the number of students.

Ms. Dineen-Carey said, yes we did.

Chairman Fine asked by how much?

Kathleen Dineen-Carey said from 66 to 125.

Memo from the Assistant Building Inspector, dated July 21, 2022 states:

The Fire Inspector inspected the property on June 21 2022 and found no violations on the property.

The Building Department has no objections for the renewal of special permit for a daycare center.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, the application to renew a special use permit for the Day Care Facility at 2090 Crompond Road, was granted for a period of three (3) years, and to increase the maximum number of students

to 125.

LACHTERMAN #34/22 This is an application for a special use permit for the parking of a commercial vehicle in a residential area as per section 300-62 of the Town Zoning Code.
Property Address:
201 Montross Rd.
Section 48.11, Block 3, Lot 32

Mailings and sign certification in order.

Michael Grace, Attorney, representing the applicant.

Mr. Grace said he has a modified large bus, conversion van. It is a mobile ice cream parlor. He uses it for events. It is an ice cream truck where you pay per serving. You rent the Ice Cream Emergency truck for your events, corporate events, birthday parties. It is a pretty cool idea; it is a new franchise which he is on the ground floor with. So he has this 25 almost 26' bus, to park it he is going to build a pole barn in the back.

Chairman Fine asked does the pole barn requires a variance.

Mr. Grace said he does not believe it does. It is a question of whether it needs a 10' or 20' rear yard setback, so I think he is providing 20'.

The Board looked at the survey of the property with the pole barn.

Mr. Grace said the property abuts a paper road which is a terminus of Summit Street which is being abandoned by the Town. Essentially it was never taken by the Town, it terminates at somebody's rear yard and the legal right over it really goes half to Mr. Lachterman and the other half to Mr. Schmidt on the other side of the right of way. So we are asking since it is going to be a permitted structure, wither straddling or within that old right of way, we have asked the Town to officially abandon their rights of acceptance.

Mr. Gregory asked if that had been done yet.

Mr. Grace said no, we did have a public hearing on that and what we have to do is provide them with a title report showing my client actually owns it.

Chairman Fine asked when is the pole barn being constructed.

Mr. Grace said as soon as we can clear the issue with the Town.

Chairman Fine said because normally when we do these commercial vehicle permits, we like to see how it is going to be shielded from the neighborhood. So sometimes we see plantings plan or in this case you are putting up a pole barn on the property, have to see how concealed it is going to be.

Mr. Grace said the final design probably has not been done yet because we are still finalizing the issue with the Town, but if barn was up there I do not think we would need a special use permit even if it is inside storage.

Mr. Gregory said yes. The ordinance basically covers both exterior and interior storage of a commercial vehicle.

Chairman Fine said the problem logistically is even if we said tonight, okay it is granted with the condition that it is stored in the pole barn, what happens if you cannot get the pole barn built because of what is going on with the Town.

Mr. Grace said he understands, but at this point we have had a public hearing on the road issue and everybody understands and try to make it clear even at the public hearing. It is about the suspenders approach to it, the Town does not own it, it is almost like a courtesy to them, it is a portion of a road that was on a filed map and it becomes a irrevocable offer of dedication to the Town which they can accept at anytime either by affirmative action or by resolution, what I mean by affirmative action is by actually improving the road. That abandoned spur has been taken care of both by Mr. Lachterman and the next door neighbor for decades. The idea is before you invest in putting a permanent structure withing the pathway, you want to make sure you got everything cleared up. So as a courtesy that is what we are doing with the Town.

Chairman Fine said the other problem is for argument sake, if it was granted and we said alright we will grant it but it has to be stored in a pole barn, the pole barn is not built yet. Once we made the decision and say it is granted and it is not in the pole barn as of the date of the decision, he is in

violation.

Mr. Grace said the simple solution is just to adjourn it until we catch up.

Mr. Gregory said the other thing you want to be aware of is that the pole barn is an accessory structure and basically you have a height limit to that. So you just want to be aware.

Michael Epting from Alan Avenue came to podium. He said I am not a neighbor of this site, but I do object to a permit that would allow for a permit for a commercial vehicle in a residential area. I live across from a man who would daily like to park a large truck in his driveway and because of that requirement he is not permitted to do that. So I would not appreciate a precedent.

Chairman Fine said it is not a precedent, the Town specifically has a permitting law on the books allowing for it if they meet certain requirements and our approval, so it is permitted with the permit.

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

NELSON #35/22 This is an application for a special use permit to covert an existing garage into an accessory apartment as per section 300-38 of the Town Zoning Code.
Property Address:
3481 Wildwood St.
Section 16.16, Block 1, Lot 8

Mailings and sign certification in order.

Damian Nelson present for the meeting.

Mr. Nelson said we are utilizing an existing garage space which was never really designed to be a garage in the home, it already has a certificate of occupancy. It was being utilize as a business office in the home.

Chairman Fine said just to be clear, there is no garage on it right now.

Mr. Nelson said no, it is a standard door going in and out. My mother-in-law is needing to slow down a little bit and be closer to home. So we are looking to getting her settled closer to us.

Chairman Fine said you are putting in an accessory apartment right.

Mr. Nelson said yes.

Chairman Fine asked where is the parking for that going to be.

Mr. Nelson said already have existing parking.

Chairman Fine asked for how many cars.

Mr. Nelson said typically you can get 4 cars in the driveway, it is a pretty large driveway.

Chairman Fine asked will it be a separate entrance for the accessory.

Mr. Nelson said yet.

Memo from the Assistant Building Inspector, dated July 21, 2022 states:

I inspected the property on June 21 2022 and found no violations on the property and have no objections to granting the special permit. This application will require a building permit and a certificate of occupancy.

Letter from David Fritz, dated July 17, 2022 states:

I am writing to express my objection to the Accessory Apartment Special Use Permit for Section 16. 16, Block 1, Lot 8 application.

First, as a homeowner, I am concerned that an apartment would change the character of the neighborhood. I purchased my home in 2006 and wanted to live with other single family homeowners, not renters. Yorktown offers its residents several choices for housing options: apartments, condos, rentals, and single family dwellings. If someone wants to live in one of those areas, then they have the opportunity to purchase a place that makes sense for them.

Second, there is nothing to prevent the homeowner from vacating the property and having two

renters on the same property. This may create an absentee landlord situation. A lack of supervision with an absentee landlord is a concern.

Further, I am troubled by the possible parking issues that this could create.

While I appreciate the need for extra income these days, I cannot condone this special use permit as it is an end run around the zoning laws. To grant the special use permit now amounts to a bait-and-switch; I purchased my house in the area that it was zoned for and to change it now is a sign of bad faith.

Chairman Fine said first off to address couple issues here. It is not an end run around the zoning laws. The zoning laws specifically permit accessory apartments if it meets the requirements, so it is in the law. Accessory apartments are only found in single family dwellings, so it is not a change to that use either. The accessory apartment law is not a new law, it was created years ago in the Town of Yorktown primarily to create affordable housing, so it is not a change to a neighborhood because all neighborhoods in Yorktown basically have them. We just have to make sure that they meet the criteria. One of the main criteria of the accessory apartment law is the main dwelling has to be owner occupied. The Town hopes that the person is watching their property and not going to be an absentee landlord. It is not a variance, it is a special use permit. Meaning it is granted for a period of time and if the term is violated in any way, the permit can be taken away or not granted again at time of renewal. So I understand the person concern, but the law specifically permits that usage as long as it meets the requirements.

Michael Daly, lives in the neighborhood. He said with all do respect to the owners of the property, this is the first time I am hearing that it is actually for a mother-in-law. I am not sure you entirely need a special use permit here for an accessory dwelling.

Mr. Meisterich said once you put in a kitchen.

Chairman Fine said if it has 2 kitchens, it is an accessory apartment.

Mr. Daly said I know a lot of in-laws move in without that technicality. My concern as a homeowner is we moved into an area, single family homes, these are ½ acre lots. We moved in for the character of the neighborhood, once that is granted as a rental, there is nothing to keep the mother-in-law there. Chairman Fine said mother-in-law does not have to be there, accessory apartments are not just for relatives, it could be anyone and they are all over the town.

Mr. Daly said exactly, but not in this neighborhood yet.

Chairman Fine said how do you know.

Mr. Daly said I have not seen any come up with the Zoning Board yet.

Chairman Fine said as far as a change in neighborhood, this particular house, there is no garage there now, the way it looks is not going to change.

Mr. Daly said that is correct. I would also ask when you drive by, take a look at the number of vehicles there, you would also see the commercial vehicle park there on occasions as well. If there are any more cars added, you got an abundance of cars parked and there is no parking on Wildwood right there.

Chairman Fine said well there is no parking allowed on the streets during certain times of the year anyway.

Mr. Daly said that is correct, but even when it is allowed that is on a blind curve, we have already had accidents there.

Chairman Fine said accessory apartments are not allowed to use as requirements for parking, street parking. It has to be self-contained.

Mr. Daly said but you are creating the potential for an issue there on the curve. In fact right in front of this residence, Yorktown Police set up their radar unit, portable radar unit, to try to slow down traffic. We have had Yorktown Police actually parking in some of the driveways with our permission, in an effort to slow down speeding and the running of the stop sign right on Wildwood Street and Wildwood Court. You start adding an accessory apartment there with the potential for someone parking on the curve, you are going to have an accident.

Chairman Fine said they could park on the street there now if they wanted to during the day, there is

nothing to prevent them.

Mr. Daly said nothing but common sense.

Chairman Fine said correct, and that is the whole thing.

Mr. Daly said all I am asking is maintain the character of the neighborhood. You heard from one of the neighbor as well. Right now you are setting a precedent.

Chairman Fine said we are not setting a precedent, it is already there. It is the law.

Mr. Daly said it is in the law, but not in that neighborhood yet.

Mr. Meisterich said we do not have an inventory in front of us with all the accessory apartments, but they are fairly common, we do 5 every meeting, so chances are in your neighborhood you have one, you just do not realize it.

Mr. Daly said I have been there 25 years and I have not seen one yet in that neighborhood. The code is very clear.

Chairman Fine said the code is very clear that it is permitted if they meet the requirements, it does not say that you cannot put one if there if there is not one there already.

Mr. Daly said but if you also read the code how it was written it could not be clearer. It states, "the intent of the code is that neighborhoods zoned as single family primarily maintain their single family character", and that is all we are asking to do.

Mr. Gregory said and that is why they did this law the way they did.

Chairman Fine said otherwise it would be counter intuitive saying you could put in an accessory apartment but you cannot if it is a single family dwelling, two opposite things.

Mr. Daly said sounds like a decision has been made.

Chairman Fine said it has not been made, just telling you what your reasoning may be faulty in certain ways, that your presuming things that are not correct.

Mr. Daly said I do not have to presume the number of accidents that occurred, I do not have to presume the speeding is occurring, I see it. I would ask that you drive down there, sit and just watch the traffic.

Mr. Meisterich said I am not sure there is a connection between an accessory apartment and people speeding.

Chairman Fine asked Mr. Nelson how many cars you have in the driveway now.

Mr. Nelson said there are a total of 3 vehicles. One for myself, one for my wife, one for grandma.

Chairman Fine asked how many more can fit with having to go on the street.

Mr. Nelson said 2 more in the driveway with no issues. The commercial vehicle that the neighbor just made referenced to is a church van that is parked from time to time. Whenever we go on a long trip we usually park there so we can pack everything in the vehicle to travel.

Chairman Fine asked so it is not stored there on long term basis.

Mr. Nelson said it is not stored there, it is actually stored at the Grace Lutheran Church, you could actually go there and you would see, it stored at that location. Part time I pastored the Pentecostal in Yorktown, it is a church vehicle it is not a commercial vehicle in traversing people, it is a 12 seater.

Chairman Fine said actually it is a commercial vehicle under our code. If it was being stored there it would need a permit.

The Board looked at the survey of the property to check the driveway.

Chairman Fine said it is wide, it have to be self-contained.

Mr. Meisterich said 5 spaces and 3 cars. He is saying there is going to be 3 cars there.

Chairman Fine said you are allowed 3.

Mr. Gregory said 1½ per unit that is the requirement.

Mr. Meisterich said all he needs is 3.

Chairman Fine said yes, if it meets the requirement.

Mr. Meisterich said that is true but since we did receive testimony about the potential for traffic dangers, even if something meets the requirement, if it was causing accidents and people could not fit, we do consider that.

Chairman Fine said except that they are not allowed to park on the street anyway.

Mr. Meisterich said we cannot assume it before it really has been granted, but for the future that is one of the major consideration for an existing accessory. If you park the van there repeatedly and too many cars and cannot fit in the driveway, that is one of the main sticking point on renewal. So I would be cautions there to make sure you do not.

Chairman Fine said if it is granted you have to be careful with the parking, it have to be self-contained, you cannot bleed out onto the street.

Mr. Meisterich said in more so than a typical house. Everybody would have guess over all the time, they park on the street if they have to, just cannot be a permanent thing.

Chairman Fine said based upon the testimony we heard I do not see a reason under the statute at least why we should not grant the application.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, the application for a special use permit to covert an existing garage into an accessory apartment as per section 300-38 of the Town Zoning Code, was granted for a period of three (3) years.

PURPURA #36/22 This is an application for a special use permit for a new accessory apartment.
Property Address:
3609 Flanders Dr.
Section 17.10, Block 3, Lot 49

Mailings and sign certification in order.

Joseph Trambetta, Architect, representing Paul Purpura.

Mr. Trambetta said the client is requesting special use permit, he has family coming from down south, they are moving back up and he needs they apartment for them. We added a bathroom and kitchen, but other than that the floor plan remains relatively unchanged.

Memo from the Assistant Building Inspector dated, July 21, 2022 states:

I inspected the property on June 21 2022 and found no violations on the property and have no objections to granting the special permit. This application will require a building permit and a certificate of occupancy.

Mr. Meisterich so it is not in the garage, the apartment.

Mr. Trambetta said no, it is in the basement, conversion in the basement.

Chairman Fine asked where is the entrance.

Mr. Trambetta said the entrance is on the left side.

Mr. Meisterich on the side of the house.

Mr. Trambetta said yes.

Chairman Fine asked how much parking do you have on the driveway.

Mr. Trambetta said can fit 6 cars.

Chairman Fine said so if you have cars in the garage can the cars in the garage get out if there is somebody on the driveway.

Mr. Purpura said I have a 2 car garage so 2 cars enclosed, plus enclosed tent and underneath the deck, It is all enclosed and black top.

Chairman Fine said my concern is if someone is parked in the garage and somebody else is parked on the driveway more towards Flanders Drive could you get out the driveway around that car.

Mr. Purpura said with 1 car in front, yes.

Chairman Fine said is it wide enough to do that.

Mr. Purpura said yes.

Mr. Meisterich asked do you know how big the square footage of the apartment is.

Mr. Trambetta said it is 24x38, we have the original floor plan as well.

The Board discussed the square footage of house and the apartment.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and

Meisterich, the application for a special use permit for a new accessory apartment, was granted for a period of three (3) years.

MARSOCCI #37/22 This is an application for a special use permit for a farm as per section 300-45 of the Town Zoning Code.
Property Address:
1225 Whitehill Rd.
Section 17.10, Block 3, Lot 49

Mailings and sign certification in order.

Ken and Myra Marisocci present for the meeting.

Ms. Marsocci said we are applying for the zoning special permit because with the fame there comes other permitted uses I guess, that might negate the building permit as we understand. You guys have been there to visit, we are a flower farm.

Mr. Marsocci said we are applying for a special use permit for a farm operation in a residential zone.

Chairman Fine said how much property is there.

Mr. Marsocci said 7¼ acres. By the code section 345 that allows permitted use of farms, greenhouse, and nurseries. I believe we meet the requirements of the total acreage and the setbacks required from the property line to build the structure we want to have and the overall square footage of the structure falls well within the permitted amount. The other application is for a variance for the shed.

Chairman Fine said if we grant the farm you do not need anything for the shed.

Mr. Marsocci said right, that is what I was going to get to because there is no primary structure on the property, the shed is considered an accessory.

Chairman Fine said if you are a farm you are allowed to have a farm stand.

Memo from the Planning Board dated, July 26, 2022 states:

The Planning Board, at its meeting on July 25, 2022, discussed the subject applications for a flower farm on White Hill Road. The Planning Board had no planning objections to the special use permit or variance requested provided there is adequate access and parking provided off White Hill Road.

Memo from the Conservation Board dated, July 22, 2022 states:

At the Conservation Board Meeting held on 7/ 20/2022 the Board met with Ken and Myra Marsocci regarding a Special Use Permit and Application for Zoning Variance for 1225 Whitehill Road. The Board

has the following comments:

- The CB requests the applicant to submit a Wetland Report and a Tree Removal Plan. The Board would like to review those before giving recommendations. As soon as the Applicant has those documents ready we ask that they reach out to be placed back on an agenda to further discuss.

Memo from ABACA dated, July 13, 2022 states:

The Advisory Board on Architecture and Community Appearance reviewed the above referenced subject at their meeting held on Tuesday, July 12, 2022. Myra and Ken Marsocci, property owners, were present. Mr. & Mrs. Marsocci explained that the application is for a special permit for a farm operation with retail of flowers and plants; and a zoning variance for an accessory structure without a principle structure in the R1- 40 zone for use as a floral cooler and market stand.

The Board feels that the proposed " shed" seems fitting for the proposed farm use and area. The Board feels that it is refreshing to see an establishment of a relatively unique nature being brought forth that is both forward thinking and reflective of the historical nature of farming in this area and our

town.

The ABACA does not object to the variances as presented.

Memo from the Assistant Building Inspector dated, July 21, 2022 states:

I have inspected this property on July 21, 2022 and hereby by withdrawn the variance listed for an accessory structure without a principle structure.

I have no objections for the special permit for farm use as per 300- 45 of the Town Zoning Code.

The applicant will need a building permit and C.O. for any structures on the property.

Chairman Fine said basically what we are being told is the Conservation Board want additional items supplied. Have you prepared any of that yet?

Mr. Marsocci said I have sent them an email with the wetlands study that I had done and information from USDA, so I have been doing a lot of proactive work with the wetlands knowing it was obviously there when we were looking at the properties, so I had a survey done when we were in contract for the property and done by a certified surveyor for wetlands. His findings were approved, it is state regulated wetlands, his findings were approved by the DEC. We have registered with the farm service agency as a farm and what that does is get the USDA to come out and verify again his findings.

Ms. Marsocci said so that is all in the process of, and just in regards to what the Conservation Board wants to know about tree clearing, that is in the future and it is not immediate by any means. So we are hoping that it could go forward knowing that there is not. We are not near the wetlands part, there is no tree clearing.

Chairman Fine said they are not only asking for the tree removal plan, but also wetlands report which they have to verify themselves.

Looking at the map, Ms. Marsocci said you can see the dotted line and this is the Yorktown map, and certainly that could be a little bit up or a little bit down according to our wetlands map, but where the structure is, is well off.

Chairman Fine said the problem we have is that we specifically sent it to the Conservation Board for input and they are telling us they want to have input but not yet. We are hard pressed to do an end around it because they may say something additional after they see the report, they may want to make specific recommendation to us to put in our decision, and I do not want to make any decision saying it is subject to anything the Conservation Board has to say because you may not like what they have to say for some reason, you want a chance to rebut it or something.

Mr. Meisterich said so right now you are not clearing any trees.

Mr. Marsocci said no.

Mr. Meisterich said are you doing any growing or anything there.

Ms. Marsocci said we are growing.

Mr. Meisterich said so you really do not need to clear more to do your operation.

Ms. Marsocci said no.

Mr. Marsocci said not at this time, that is all open fields and it was when we purchased it.

Mr. Meisterich asked what was there before.

Ms. Marsocci said it was a community garden.

Chairman Fine said it was part of the church that is next door.

Ms. Marsocci said and before that it was a ballfield, and one of the remarkable rare things is to find land that has not been stripped of the top soil, and so as organic farmers that was pretty key to us but not only that we are preserving that.

Mr. Meisterich said so when it was a community garden was it part of the church property.

Ms. Marsocci said it was part of the church property, it was subdivided a long time ago. The church was sold along with their pastor house. I am not sure what year that was, and the community garden has been there for about 7 years I think.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and

Meisterich, this item is adjourned to get input from the Conservation Board.

MARSOCCHI #38/22 This is an application for an accessory structure without a principle structure in a R1-40 zone as per section 300-21 and Appendix A of the Town Zoning Code.
Property Address:
1225 Whitehill Rd.
Section 17.10, Block 3, Lot 49

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

ELEZAJ #39/22 This is an application to legalize three (3) accessory apartments in a single family home with an existing non-conforming cottage making the total of four (4) dwelling units in a single family district.
Property Address:
1658 Amazon Rd.
Section 25.12, Block 2, Lot 32

Mailings and sign certification in order.

Alex Elezaj present. Mr. Elezaj said when we original purchased the property it was the week Covid hit.

Chairman Fine said what was the date you purchased it.

Mr. Elezaj said March 2020. Upon our due diligence, I think it is important to note the fact that we realized that there was a recording issue with the property, in terms of how it was recorded. It is an oversize lot I think for the neighborhood.

Chairman Fine asked what is the size of the lot.

Mr. Elezaj said it is almost an acre and a half, corner lot and there is some very unique characteristics about the property. I am actually considering calling it Amazon Gardens because it is a beautiful corner lot, but something to recognize is that it has 3 driveways. One on Amazon Road, and the adjacent road Maqua Place, and upon the recordings when we reviewed of the documents, it seems there was some recording issues with the property, and the assessment card it shows that there were and has been traditionally and historically a multi-unit structure there. There are 3 separate entrances for each unit within what we call the main house and then there is a separate structure which is the cottage. I believe considering the fact that there is lake right to this property that it was and has always been run as a multi-unit structure, where it may have been owner occupied by the previous owner. Historically there has always been a multi-unit structure at that property. There are 3 separate entrances, in addition once again there is 3 separate driveways. Chairman Fine said was the garage also a residence of some kind, because there was an eviction notice posted on it.

Mr. Elezaj said it is kind of weird because there are some plumbing lines there.

Chairman Fine said there is no stack in the roof so it could not have had a toilet, at least not one that worked.

Mr. Elezaj said no there was not, maybe a sink, but unless somebody could live there without a shower, but there is a separate structure which is the garage.

Mr. Gregory asked when you purchased the property, was it vacant.

Mr. Elezaj said no. The week Covid hit there were 3 tenants. One vacated literally the day that we closed. So there were 3 tenants in the cottage and 2 other tenants in the other units. Unfortunately, the Covid wave affected us and one of the tenants did not pay rent for nearly an entire year, and the other tenant recently moved out and so did the other tenant at the cottage. So right now the property is completely vacant.

Chairman Fine asked where do you live?

Mr. Elezaj said Connecticut.

Chairman Fine said one of the main precepts of the accessory apartment law is that is has to be

owner occupied. In the 20 something odd years I have been on this Board we have never varied that rule, it is specifically there so that the owner watches over the property.

Mr. Elezaj said I actually purchased the property because my father was a building manager in the city, I purchased the property for him and my mother to move into so he can manage the property.

Chairman Fine said but he is not the owner.

Mr. Elezaj said in terms of what, interest.

Chairman Fine said owner occupied.

Mr. Elezaj said he is part owner, he is my father.

Chairman Fine asked is his name on the deed.

Mr. Elezaj said his name is not on the deed, it is under an LLC.

Mr. Meisterich said so an LLC owns the property.

Mr. Elezaj said correct, and I am 100% owner of the LLC. The intention was for my father to live there with my mom, down size the property.

Chairman Fine said it is opposite of what you just said. If you are 100% owner of the LLC, then he does not have an interest in the property.

Mr. Elezaj said correct, but the intention is my father would down size and live in the cottage and manage the property.

Chairman Fine said but it is still not owner occupied.

Mr. Gregory asked the cottage contained one dwelling unit when you bought it.

Mr. Elezaj said correct.

Mr. Gregory said and the other building when you bought it, contained 2 dwelling units.

Mr. Elezaj said 3. So there is 2- 1 bedrooms, 1- 2 bedroom apartments.

Mr. Gregory said when you bought the property, you are saying that they were occupied.

Mr. Elezaj said 3 of the units by the time we closed.

Chairman Fine asked what certificate of occupancy does the structures have.

Mr. Elezaj said upon our review it was conflicting. I do not think there was a certificate of occupancy either registered or confirmed, the assessor card and the certificate of occupancy actually ready very differently.

Chairman Fine said they do not always match, but the certificate of occupancy is important.

Mr. Elezaj said it read I believe as a single family. It is not a single family because there are multiple structures on the property.

Chairman Fine said correct, it means that it just was not legal.

Mr. Gregory said what was the date of the certificate of occupancy.

Mr. Elezaj said I believe it dated back in the 40's or 50's.

Chairman Fine asked the Steve Fraietta, do we have any information on that.

Mr. Fraietta said no, I do not have a certificate of occupancy on this property that I recall. There is nothing on file. They had some minor permits taken out over the years.

Mr. Gregory asked there is nothing in the records.

Mr. Fraietta said nothing that I could find, and I looked at all the records the best I could.

Chairman Fine asked when was the building built, do you know.

Mr. Fraietta said I am guessing they were built in the 40's.

The Board discussed the issue with the certificate of occupancy with Mr. Elezaj and Mr. Fraietta.

Chairman Fine said one of the things we are struggling with besides the fact that it has to be owner occupied, is this may not be an area variance or permit application at all but a use variance, because you are not using the property as it is intended to be. It is not intended to be used for 5 dwelling units, it is intended to be used for 1 dwelling unit with possible 1 accessory apartment, that is the law. So if you are going beyond that it is no longer an area variance, it becomes a use variance. I do not know if you understand what that means.

Mr. Elezaj said I do not.

Chairman Fine said what you are asking for basically is a special use permit for the apartment, but you are also asking for an area variance, and there are different criteria for an area variance versus a use variance. In order to get a use variance, which means basically you cannot use the property for any other use other than what you are asking to use it for. So you are asking for a use variance. In order to prove that, it is extremely difficult to be able to show us that you cannot use that property for anything else other than 5 dwelling units, which obviously is a tough road to hoe, because you can use it as a single family dwelling. So when I say it is a difficult application, it may not be an area variance and permitting application, it may be a used variance all together.

Mr. Gregory said quite frankly I am inclined to not believe it is an accessory apartment situation at all only because the accessory apartment legislation basically says an owner occupied single family dwelling with an accessory apartment. We are not talking about 5 units, we are not talking about multiple dwellings, we are not talking about multiple buildings. I think the issue is trying to make this as if it is a variance from an accessory apartment regulation. It really is not that case here. Not an accessory apartment, it does not even come close.

Chairman Fine said you are trying to make us turn a car into a bus.

The Board discussed with the applicant the requirements of a use variance, and the issue of the certificate of occupancy.

Memo from the Planning Board dated, July 26, 2022 states:

The Planning Board, at its meeting on July 25, 2022, discussed the subject applications to legalize several accessory units in a single- family zone. The Board felt a site visit would be required in order to make recommendations on the special permit and variance requests, which would be scheduled prior to their August 15, 2022 meeting.

Therefore, the Planning Board requests more time to respond to this referral.

The neighbors commented on the application and voiced their objections.

Emails from neighbors with their objections submitted to the file.

Signed petition from the Amazon Beach Park Residents & Greater Mohegan Lake Improvement District Residents with their objections submitted to the file.

Chairman Fine told the applicant, you have heard all that has gone on tonight, we have to adjourn any way because the Planning Board wants input. The suggestion I will give to you is given all that you have heard, you may want to talk to a semi professional on this issue to find out where you stand on it and what you want to do going forward, if you want to maintain the application or move to another application or give it up all together. I am not going to tell you what to do but you really should do some serious consideration with your application given what you heard tonight.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, this item is adjourned for input from the Planning Board.

ELEZAJ

#40/22

Property Address:

1658 Amazon Rd.

Section 25.12, Block 2, Lot 32

This is an application to allow two (2) primary structures on a lot where one (1) is permitted as per section 300-21C(1)(a)[1], to allow a combined floor area of 3 accessory apartments of 1835 square feet where 800 square feet accessory apartment is permitted as per section 300-38B(5), to allow usage of property that is not owner occupied as per section 300-38B(8), and to allow four (4) accessory apartments where one (1) is permitted in a R1-40 zone as per section 300-38B(9).

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and

Meisterich, this item is adjourned for input from the Planning Board.

YANCOPOULOS #41/22 This is an application for an addition with a side yard setback of 4' where 30' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is pre-existing non-conforming.
Property Address:
1370 Baptists Church Rd.
Section 47.10, Block 1, Lot 6

Mailings and sign certification in order.

Bill Spade and Keiko Spade, Architects, representing the applicant.

Mr. Spade said it is a existing property with an existing stone cottage. It is an oddly configured lot as you see from the diagram. The existing cottage is within 4' in the right corner, 4.6' off the right side property line. I think it was in the 70's even, that these lots were subdivided. I believe there is a white farm house to the left of the stone cottage, I think it was all one lot and then subdivided, why they made such an odd configuration for this particular lot. This non-conforming condition was self created when the subdivision was created. The stone cottage is 4.6' front right corner from the lot line.

As you see from the diagram we are proposing to do an addition on the rear of the structure, enlarge a kitchen.

Chairman Fine said just to clarify, when you say rear, when you are on the driveway it is king of more to the side than it is the rear, but it is the rear of the house.

Mr. Spade said the driveway that continues to the right of the house goes to that rear house. There is a circular driveway in front of the cottage, that is the driveway.

Mr. Gregory said just from being out there, there is a stone patio, is that where it is going to go.

Mr. Spade said correct. Again, proposing that addition, 12' to the rear across the back of the structure. We are also going to raise the roof, presently it is a 1 story structure, there is a tiny little loft space, storage space above one of the bedroom and the owner wanted to create a full height loft area, might call it a 2nd floor that will overlook the main.

Chairman Fine asked do you have an as built drawing.

Mr. Spade said do and plans.

The plans were showed to the Board.

Memo from the Assistant Building Inspector, dated July 21, 2022 states:

I inspected the property on June, 21 2022 and found no violations on the property and have no objections to granting the variances. This application will require a building permit and a certificate of occupancy.

Mr. Spade, said I discussed this with Steve, it is a slab to grand and they have water infiltration issued regularly so the owner wants to raise up the floor. So the ideas is going to be retain the slam and grade, retain the existing exterior walls, build a new 1st floor essentially 4' up from the existing slab and grade.

Chairman Fine asked is that all on the plans.

Mr. Spade said it is on the plans and it is just extending up the side walls, the grade will come up so that building that you see on the drawing remains the same proposed building, just kind of raising everything up. The floor is higher and the grade is higher, so the wall heights remain the same. It does not change anything you are granting, because that is the side yard, does not change the heights, just want to make sure that was clear in terms of what is being planned.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Fine, Gregory, and Meisterich, the application for a variance for an addition with a side yard

setback of 4' where 30' is required as per section 300-21 and Appendix A of the Town Zoning Code. This property is pre-existing non-conforming. Was granted 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 8:09pm
Happy Zoning!