

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS**  
**October 27<sup>th</sup>, 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, October 27<sup>th</sup>, 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  
Anthony Tripodi

Also present is Kyra Brunner, Legal Secretary.

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

It was announced that the next public hearing would be held December 8<sup>th</sup>, 2022, site visits are scheduled for December 3<sup>rd</sup>, 2022. Mailings are to be sent from November 14<sup>th</sup> to November 23<sup>rd</sup>, 2022.

**NEW BUSINESS**

**PUFAHL #52/22** This is an application to construct an addition in the rear yard with a side yard setback of 13.75 ft where 15 ft is required as per section 300-21 and Appendix A of the Town Zoning Code.  
**Property Address:**  
**720 Mercer Rd.**  
**Section 26.20, Block 1, Lot 78**

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 December 8<sup>th</sup>, 2022, Site Visit will be done individually by the Board Members, 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.  
**Property Address:**  
**1681 Summit St.**  
**Section 48.07, Block 2, Lot 9**  
This property is located in a R1-10 zone.

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

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

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

**WALLACK FAMILY LTD #23/22** 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.  
**Property Address:**  
**1549 Jacob Rd.**  
**Section 36.13, Block 1, Lot 14**

Application withdrawn by Applicant.

**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**

David Steinmetz representing the applicant.

Chairman Fine said what we were saying to the applicant last time basically is that this is more akin to a use variance than an area variance because he is changing the usage of the property, also, the unit is not owner occupied. We have never varied that in an accessory apartment application, in the 25 years I have been here. We never had an application to vary, that is why I suggested he may want to get counsel.

Mr. Steinmetz said let us take a couple steps back, I am not quite sure I agree with that threshold position and do so appreciate the fact that you have shared it. My understanding and my review that there is history of multifamily use and occupancy on that property for decades.

Chairman Fine said with or without permits.

Mr. Steinmetz said Mr. Chairman it does appear that there may be an argument that he has that this is a pre-existing, pre-conforming use. I am not here tonight to advocate that, though if the Board tells me that is the position I need to advocate, I would do so.

Chairman Fine said you can advocate it however you want.

Mr. Steinmetz said I went to the property and saw the units, saw what he was doing, saw the three driveways, saw the three curb-cuts and saw that the Town of Yorktown, that our Town of Yorktown issued permits and allowed five electrical meters to be installed there within the last year. Four. One for each residential unit and one for the common area, and I combined that Mr. Chairman and member of the Board with the fact that though not directly on point to me, it is relevant as to why I am personally here. Westchester County Association recently formed a housing action committee, a steering committee, I was asked to chair that committee. I am working on a committee that is serving government officials, non-for-profit organizations, lawyers and developers to deal with the fact that we have a housing crisis in Westchester County. David, why are you raising that, what does that have to do, that is exactly what this application is all about to me. What I saw when I went out there is that our Town has had four residential units on that property, whether they were there previously lawful or not, they were there, people lived there, the units exist, they are physically constructed. There are demising walls that differentiate between these individual living quarters. What this guy did, he did not hire me at the time he bought the place, if he did this would have probably unfolded differently. He bought it, somebody else represented him, he bought it, he now owns it. I do not think he understood exactly what he was buying into at the time he bought it, but he bought it. So what he

was he has spent a ton of money taking what we all lived in this town with, four units that were not in good condition. I know the neighbors are here and I can only imagine what the neighbors lived with, with the prior owner and the prior occupants of this property. But what I am here tonight advocating is that I think we owe it to this property to make sure that it is in fact legal. That John Landi knew what he was doing when he on behalf of the Town of Yorktown gave five electrical meters. I am dead serious when I say I think we have an opportunity here, I do not think this is a use variance analysis.

Chairman Fine said one of the applications is for a non-owner occupied accessory apartment. We have never varied that part. Here is the problem with it. The accessory apartment law when it was designed way back when, was designed to create affordable housing in the Town of Yorktown, but it was specifically designed for owner occupied houses, because they did not want two-family homes, they wanted the owner to be there to watch over the home and then he has an accessory apartment that is accessory to the main use. We have never, as far as I know varied that, if we did, we would be setting the Town up for two-family houses all over town.

Mr. Steinmetz said so let me make sure I and Alex fully understand that. Does that relate solely to the one structure that is for the one structure that has the two units in it?

Chairman Fine said that is for the one application you have, the other application which then kind of combines everything on the same property, whether you can have that many units on that piece of property.

Mr. Steinmetz said how do we deal with that fact that we had four units on that property historically. How do we deal with that fact, and this is the part, the reason I took this on. I think you all are doing an injustice if you ignore the fact, and you all saw it, there is a piece of property that has three driveways, three curb cuts and three structures.

Mr. Fahey said does not mean to say that he did it with permits, he could have done it illegally, could have been done it unobserved for years and no one is knocking on the door to say hey that is illegal, unless it was flagged. So it is quite possible whoever had the property before did it illegally.

Mr. Steinmetz said I am not sure they did, I suspect you may be right.

Chairman Fine asked are there highway department permits for each of the curb cuts?

Mr. Steinmetz said no.

Mr. Gregory said at the end of the day the only thing that I have seen to justify or even mention any of this is that small note on the accessor card saying that in 1975 an apartment was created in the building, that is the only thing that I am aware of. So I guess to start off with somebody has got to tell me, somebody has got to give me some kind of justification for the stuff we need, nobody has done that yet.

The matter was discussed further. The Board and Mr. Steinmetz discussed the information on the assessor card, the absence of initial paperwork, the issuance of the five electrical meters and history of the property.

Mr. Steinmetz said I am here in an unusual situation without question trying to see if you and the Town are willing to try and be creative and find a solution to a clear predicament. Were you to flat out deny the request, then theoretically, probably two of the three structures have to be demolished and one of them reconstructed, reconfigured.

Chairman Fine said what I like to do is have someone from the Building Department next time who had actually diligently searched for the records and tell us where they searched specifically and what they can or cannot come up with.

Mr. Gregory told Mr. Steinmetz you may also want to reach out to the County.

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

**ELEZAJ #40/22** 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).

**Property Address:**  
**1658 Amazon Rd.**  
**Section 25.12, Block 2, Lot 32**

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

**ALIHAJDARAJ #45/22** 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.

**Property Address:**  
**830 Barberry Rd.**  
**Section 26.12, Block 1, Lot 14**

Mailings and sign certification in order.

Osman Alihajdaraj present.

Mr. Alihajdaraj said this is for legalizing the shed. I replaced the old one. I came here to the Building Department, spoke to the inspector and he says as much as you are replacing the old one with the new one, if it is less than 100 square feet you do not need a permit so you could do that. I did that and now I feel a little bit pushed here.

Mr. Meisterich said is it too close to the property line.

Mr. Alihajdaraj said the point is I did hear word from the Building Inspector, he was there on the property.

Chairman Fine said the size of the shed would say whether it needs a building permit for the shed itself, but it still has to be the right amount of feet off the property line.

Mr. Alihajdaraj said I understand, but he did not tell me that.

Chairman Fine said whether he told you that or not, it is the law in the town.

Mr. Gregory asked the shed that we are talking about now is a replacement for a shed that was there.

Mr. Alihajdaraj said correct.

Mr. Gregory asked how long ago did you replace it.

Mr. Alihajdaraj said I did replace this, like three years ago.

Memo from the Assistant Building Inspector, dated September 15, 2022 states:

I inspected this property on September 14, 2022 and found a 6' 6" fence on the right side but in the front yard of the property that will require a variance. As for the shed I have no objections to granting relief requested. This application will require a building permit and a CO.

Mr. Alihajdaraj said the inspector did see that also, and he never said that I am in violation with that. I did build a small deck which I have permit. I have permit from the inspector here from the town.

Chairman Fine said but he said there is an issue about the fence also.

Mr. Alihajdaraj said I understand, for the fence I asked and he said no. The fence is exactly on the property line.

Chairman Fine said I am not talking about the property line, talking about the height.  
Mr. Fahey said you are only allowed to have specific heights, yours exceeds by two feet.  
Mr. Meisterich said what brings you here, why was this caught after you put the shed in.  
Mr. Alihajaraj said I do believe my neighbor. With all due respect to people.  
Mr. Alihajaraj spoke about issues with the neighbor and his prior tenants.  
Mr. Gregory said the shed that you put in in 2019 is a replacement for a shed that was there previously.  
Mr. Alihajaraj said correct.  
Mr. Gregory asked was it in the same location.  
Mr. Alihajaraj said correct.  
Mr. Gregory said so in other words, that shed that was there previously, did you put that in or did the person that owned it before you.  
Mr. Alihajaraj said the shed was put there I do believe in 1964 by the previous owner.  
Mr. Gregory said so in other words you are saying there was a shed in that exact location.  
Mr. Alihajaraj said correct.  
Mr. Gregory asked how long has you owned the property?  
Mr. Alihajaraj said June 2014.  
Chairman Fine said there is a survey in the file that shows an old shed right on the property line.  
Mr. Meisterich said it is hand drawn, did you get a survey.  
Mr. Alihajaraj said I did not do it in 2014, this year I did the survey.  
Mr. Alihajaraj showed the survey to the Board.  
Mr. Fahey asked how hard would it be to move that shed away from the property line.  
Mr. Alihajaraj said to tell you the truth, I would have to bring people in with machine.  
Chairman Fine asked there was any comments.  
Victoria Leigh, neighbor, came up to voice her opposition and issues with Mr. Alihajaraj.  
A letter and photos were also submitted by Ms. Leigh.

The matter was discussed regarding the location of the shed and fence.  
Chairman Fine told Mr. Alihajaraj this is the question I have for you. You have two choices, we could decide the matter of the shed only tonight, but that leaves also the question of the fence which is in violation. So, you would have to take that up at a separate time with the Building Department, or you can re-notice your application to include a request for a variance for the shed and the fence height at the same time. So you come back so we can resolve both at the same time, that is your choice to make right now.  
Mr. Alihajaraj said because I did not have any written violation for the fence from the Building Department.  
Chairman Fine said the Building Department is bringing that up now at this meeting, we have a memo that said there is a violation.  
Mr. Alihajaraj said let us go with the shed.  
Chairman Fine said at this point going to move the application on the shed alone.  
Based on what we heard, to me it sounds like the new shed is further away from the neighbor property than the old shed was, and it is a question of animosity that is driving the application more than anything else. So it is not really changing the character of the neighborhood in that sense because there always was a shed in that backyard somewhere along the line or fairly close to the line.

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 Tripodi, the application for a variance was granted 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. With the stipulation it pertains only for this particular structure and not the remainder of the property line, and with the understanding we are not addressing the issue of the fence.

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

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

### **NEW PUBLIC HEARING**

No public hearings

Recording Secretary, Glenda Daly  
Meeting adjourned at 7:47pm  
Happy Zoning!