

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
MAY 25TH, 2023**

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 25th, 2023. The meeting began at 6:30 p.m.

The following members of the board were present:

William Gregory
Gordon Fine
John Meisterich

Also present is Steven Fraietta, Assistant Building Inspector, Adam Rodriguez, Special Counsel, and Nisreen Khoury.

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 22nd, 2023, site visits are scheduled for June 17th, 2023. Mailings are to be sent from May 30th to June 7th, 2023.

NEW BUSINESS

NEWMAN **#18/23** This is an application for a renewal of a special use permit for an
Property Address: accessory apartment.
388 London Rd
Section 17.17, Block 3 Lot 27

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

HENSON **#19/23** This is an application for a two-story addition that will require
Property Address: variances for a rear yard setback of 12.81 sq ft where 30 ft is
2781 Hyatt Street required and is on a non-conforming lot of 8864 sq ft where
Section: 27.10 Block: 2 Lot: 5 20,000 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 Gregory, Fine, and Meisterich, this item was scheduled for a Public Hearing on June 22nd, 2023, Site Visit on June 17th, 2023, and referred to the Building Department.

ALEXANDRE **#20/23** This is an application to allow a chicken coop in a front yard (yard
Property Address: was determined by a previous variance #80/93) that will require a
2107 La Voie Ct variance of 30 sq ft where 40 ft is required and a lot size of 20,226
Section: 37.09 Block: 1 Lot: 2 sq ft where 40,000 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 Gregory, Fine, and Meisterich, this item was scheduled for a Public Hearing on June 22nd, 2023, Site Visit on June 17th, 2023, 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:
1681 Summit St.
Section 48.07, Block 2, Lot 9

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, this item is adjourned as requested. Application needs to be noticed again to open.

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 Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, this item is adjourned as requested. Application has to be noticed again to open.

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

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

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

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

GUZMAN #14/23 This is an application for a special use permit for an accessory apartment.
Property Address:
395 Hallocks Mill Rd
Section 37.10, Block 1 Lot 36
Not open. Mailings not in order.

NEW PUBLIC HEARING

PERSICHETTI **#9/23** This is an application for a renewal of a special use permit for an accessory apartment.

Property Address:
1344 Edcris Rd

Section 36.10, Block 2 Lot 34

Mailings and sign certification in order.

Joanne Persichetti present.

Memo from the Assistant Building Inspector, dated May 22, 2023 states:

I inspected this property on May 22, 2023 and found no violations. I have no objections to granting a renewal for a special permit.

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

GELBMAN **#11/23** This is an application for a special use permit for an accessory apartment.

Property Address:
1881 Morningview Dr

Section 48.09, Block 1 Lot 26

Mailings and sign certification in order.

Carla Gelbman present.

Chairman Fine asked if there is an apartment existing there.

Ms. Gelbman said there is a long story there. The apartment has been there since the house was built. Grandparents lived there, I lived there. I bought the house from my mom, it was never legalized so we are legalizing now. Approved for four bedrooms; three-bedroom house, one bedroom apartment, so the apartment has been there since 1959.

Chairman Fine said and you live in the main structure.

Ms. Gelbman said yes.

Chairman Fine asked you own the main structure.

Ms. Gelbman said yes I do.

Memo from the Assistant Building Inspector, dated May 22, 2023 states:

I inspected this property on May 22, 2023 and found no violations. I have no objections to granting a special permit for an accessory apartment.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, the application for a special use permit for an accessory apartment was granted for a period of three (3) years.

STEVENSON **#12/23** This is an application for an addition that will require variances for a front yard setback of 32.99 ft where 40 ft is required and a side yard variance (corner lot) of 26.31 ft where 40 ft is required as per section 300-21 and Appendix A of the Town Zoning Code.

Property Address:
2801 Crescent Dr

Section: 26.15 Block: 2 Lot: 7

Mailings and sign certification in order.

Frank Tangredi, Architect, representing the applicant on behalf of David Tetro.

Mr. Tangredi said we are here tonight to ask for front yard variances on a corner property. There are three additions that are going to be put on the property. One being to the left side if you are looking at it from the front, would be a two story addition with a garage and a master suite above that. The

house is currently what we call a splanch, a spit ranch. To the front of the property, we are asking for a front yard variance that comprises of an expansion on the existing kitchen and to the side property which is facing the other street would be the proposed living room, which also requires a variance for side yard equal to the front yard variance.

Memo from the Assistant Building Inspector, dated May 22, 2023 states:

I inspected this property on May 22, 2023 and found no apparent violations. I have no objections to granting relief. This application will require a building permit and a certificate of occupancy.

Letter from a neighbor Alfonso Cafaro, dated May 4, 2023, has no objections.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, the application for a variance was granted for an addition that will require variances for a front yard setback of 32.99 ft where 40 ft is required and a side yard variance (corner lot) of 26.31 ft where 40 ft is required as per section 300-21 and Appendix A of the Town Zoning Code. With the stipulation it pertains only to the requested variance and not the remainder of the property line, and the additions be built in substantial conformity to the plans submitted.

CICERO #13/23 This is an application for an addition to the rear of an existing non-conforming structure that requires a variance for a front yard setback of 8.3 ft where 75 ft is required and lot area of 38,369.68 sq ft where 200,000 sq ft is required, as per section 300-21 and Appendix A of the Town Zoning Code.
Property Address:
1575 Journeys End Rd
Section: 69.10 Block: 1 Lot:
15

Mailings and sign certification in order.

Frank Tangredi appeared with Bridgette Cicero.

Mr. Tangredi said we are asking for a variance for a non-confirming home basically where it is situated. A 75ft. front setback is the requirement and currently it is at 8.3ft., the house was built I believe in 1820, and there has been a few changes over the years, but the house was bare. So that was one of the hardships. Our addition is going to be completely within the rear of the property, but it entirely falls within the front yard setbacks because of the way it is situated.

Chairman Fine asked without the addition, the house the way a currently stands, does it comply with the setbacks.

Mr. Tangredi said no.

Chairman Fine asked have those ever been legalized.

Mr. Tangredi said we are doing that.

Memo from the Assistant Building Inspector, dated May 22, 2023 states:

I inspected this property on May 22, 2023 and found no apparent violations. I have no objections to granting relief. This application will require a building permit and a certificate of occupancy.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, the application for a variance was granted for an addition to the rear of an existing non-conforming structure that requires a variance for a front yard setback of 8.3 ft where 75 ft is required and lot area of 38,369.68 sq ft where 200,000 sq ft is required, as per section 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line, and the additions be built in substantial conformity to the plans submitted.

PALMIOTTO #15/23 This is an application to allow construction of a 2nd story addition that will require variances for: a front yard setback of 17'9" ft
Property Address:

3213 Mohegan Ave
Section: 25.08 Block: 3 Lot:
25

where 30 ft is required and a side yard variance of 7'9" ft where 12 ft is required. A total of 2 sides of 19'6" ft where 24 ft is required and a non-conforming lot of 7,580 sq. ft. where 20,000 sq. ft as per section 300-21 and Appendix A of the Town Zoning Code. A previous variance (#65/94) was granted.

Mailings and sign certification in order.

Mark Palmiotto present.

Mr. Palmiotto said three months ago we had a fire in the house so now I was thinking it is probably the time to get a little bit bigger, I have a family of six, four kids. We are just looking to put the second floor on the existing frame of the house now, go straight up.

Chairman Fine asked the house itself already meets the rest of the setbacks that is required.

Mr. Palmiotto said the front left and the back right are a little bit out of the building structure.

Chairman Fine said but you are not changing that.

Mr. Palmiotto said no, we are building straight up.

Chairman Fine said was it ever approved.

Mr. Palmiotto said I believe it is legal non-conforming.

Memo from the Assistant Building Inspector, dated May 22, 2023 states:

I inspected this property on May 22, 2023 and I have no objections to granting relief for the addition. Upon the inspection I found a above ground pool with no permits, a shed with no permits, both encroaching on the side yard setback requirements for accessory structure. The owner of the property stated that he will remove both of these structures. Also, a fence of 6' 6" was installed in yards that will require a variance. This application will require a building permit and a certificate of occupancy.

The location of the fence was discussed.

Chairman Fine asked what are you planning on doing with the fence.

Mr. Gregory said you want to leave it.

Mr. Palmiotto said I would like to leave it if I can, it has been there for quite a while.

Letter from Linda Caffrey, dated May 16, 2023 in support of the application.

Chairman Fine said what are you planning to do with the shed.

Mr. Palmiotto said now we are going to have a garage so we can take the shed down.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, the application for a variance was granted to allow construction of a 2nd story addition that will require variances for: a front yard setback of 17'9" ft where 30 ft is required and a side yard variance of 7'9" ft where 12 ft is required. A total of 2 sides of 19'6" ft where 24 ft is required and a non-conforming lot of 7,580 sq. ft. where 20,000 sq. ft as per section 300-21 and Appendix A of the Town Zoning Code. With the stipulation it pertains only to the requested variance and not the remainder of the property line and the additions be built in substantial conformity to the plans submitted, and with the condition that the existing pool and shed be removed, and adding into the variance the 6ft.6in. currently existing fence in the side yards and not the remainder of the property line.

YORKTOWN 6N- HOLDINGS,
LLC #16/23
Property Address:
670 East Main Street
Section: 16.08 Block: 1 Lot 34

This is an application to construct (4) two story, three-bedroom townhouses on 0.52 acres that will require variances for floor area ratio of 0.27, a front yard setback of 25 f, a side yard setback of 23' 11", a rear yard setback of 25 ft and building separation of 72'1".

Mailings and sign certification in order.

Will Angiolillo of Hahn Engineering representing the applicant.

Mr. Angiolillo said right now there is a single-family residence here on the property.

Chairman Fine asked how old is that residence, do you know.

Mr. Angiolillo said we do not have any idea, it has been there for quite a while, and it is not in the best of shape. The applicant is proposing to construct four townhouses, we have been to the Planning Board to discuss this project with them. We initially started with five units, they have asked us to reduce it, so we brought it down to four. We have twelve space parking lot. We positioned the parking lot such that we protect as many trees on the property as we can possibly do.

The triangle on the center of the plan, that is the building envelope. Just about anything that you build on this property would need some sort of variance, cause of the non-conforming lot shape of it. We positioned the building such that we can get the most out of the building into that envelope while keeping the parking where it wants to be lined up with the existing road ways, meet the necessary grades. That is sort of how we landed at this layout, it kind of mimics the property to the east in terms of layout and style.

Chairman Fine asked where is the closest other single-family dwelling to this one.

Mr. Angiolillo said there is a residence on the left side of this building, there is another parcel triangular in shape.

Chairman Fine asked is this going to be properly screened from that residence.

Mr. Angiolillo said yes, you have nice large green area. You will have the building, the parking lot, then you have the green space. We can put additional trees if necessary to screen it.

Memo the Planning Board, dated April 25, 2023 states:

The Planning Board is currently reviewing a residential site plan application for the subject property located on 0.52 acres in the R-3 zone. The size and shape of the parcel create a very small building envelope thereby any new development would require multiple variances. In addition, the location facing commercial development at the intersection of East Main Street and Lee Boulevard make the site undesirable for a single-family or two-family home. As a result, the zone was changed from R-2 to R-3 in 2011 after the adoption of the Comprehensive Plan.

The applicant initially proposed a five-unit building however, the Board determined a four-unit building would better suit the small parcel because it would allow for more space around the buildings and parking. The proposed development also provides for the preserving of several specimen trees on the site and several trees that currently screen the Surrey Court development from the intersection. The Board therefore recommends the Zoning Board of Appeals approve the variances required for the four-unit development proposed.

Memo from the Assistant Building Inspector, dated May 22, 2023 states:

I inspected this property on May 22, 2023 and have no objections to granting relief. This application will require a building permit and a certificate of occupancy.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, the application for a variance was granted to construct (4) two story, three-bedroom townhouses on 0.52 acres that will require variances for floor area ratio of 0.27 where 0.23 is required, a front yard setback of 25 f where 50 feet is required, a side yard setback of 23' 11" where 50 feet is required, a rear yard setback of 25 ft where 50 feet is required and building separation of 72'1" where 90 feet is required. With the stipulation it pertains only to the requested variance and not the remainder of the property line, and be built in substantial conformity to the plans submitted.

FALCONE

#17/23 This is an application to reconstruct an existing multi family

Property Address:
1450 East Main Street
Section: 16.09 Block: 2 Lot: 6

dwelling that has been approved by a variance dated July 29, 1976 for 3 dwelling units, where the applicant is requesting 4 dwelling units. This application will require a front yard variance of 22 ft where 40 ft is required, as per section 300-21 and Appendix A of the Town Zoning Code.

Mailings and sign certification in order.

Rich Falcone present.

Mr. Falcone said I think everyone knows what the house looks like. After looking at it to repair, that is not repairable. What I would like to do would be an extensive remodel to the structure that is there. After looking at the floors inside, they are all different levels and to make it more conducive to today's living plus the townhouses across the street, I think it would look better if we try to mimic and make that whole area nice with this house.

I have a plan; the two ground floor apartments would be two bedrooms each. I designed it in a way so that they would have a lot more lighting and windows in there. So seniors or I was even thinking handicapped people would be able to access those apartments because they are ground level. And then the two apartments upstairs with the way I designed it, it would be more suitable for people to live in. Not looking for quick apartments, I am looking for people that want to move there and live there. I am looking to really make a nice layout, and the overall design of the house. I would like it to be appealing from the streets. Also, from going to 4 two-bedrooms, according to the code, you are only allowed two people per bedrooms according to the square footage. With going with four apartments with two bedrooms, it would be allowed maximum sixteen people in that house. By going with three apartments, three bedrooms each, you are looking at eighteen, so I am actually cutting the occupancy load from eighteen to sixteen. Plus the health department, they are reviewing everything now, but a preliminary conversation I had with them, they said by going to the 4 two bedrooms, it would be less impactful on the septic system and the septic system that is there is meant for nine bedrooms.

Memo from the Assistant Building Inspector, dated May 22, 2023 states:

I inspected this property on May 22, 2023 and have no objections to granting relief requested. This application will require a building permit and a certificate of occupancy.

Mr. Falcone said I have something else, in the town code I think it would pertain to this, I am not sure if it is 368, the dwelling for hotels in the town zoning code. There is something in there, I do not know if that pertains to this or not.

Chairman Fine said there are couple of issues we were concerned with first. No. 1 – what you are stating is the building is basically a tear down.

Mr. Falcone said yes and no, level 3 alterations.

Chairman Fine said the question we had originally was the property was not originally zoned for three family use. In 1976 the Zoning Board granted a variance to the owner then for three dwelling units, and that is the way it was supposed to be going forward. Going forward there was changes by various owners, not exactly legally but that is the way it went but it was a variance for three dwellings. Our concern was if you take down the structure, do you lose that variance because it was a variance for three dwellings.

Mr. Falcone said I am not taking down the structure.

Chairman Fine said, so we consulted with our attorney.

Mr. Rodriguez said as you said, in 1976 the Zoning Board granted a variance, and generally the law is that use variance and area variance, because it is a use variance, runs with the land and effective what you have is a rezoning for the specific parcel of land at issue. So in my opinion the variance to allow the three family development would continue.

Chairman Fine said, so basically if it was not a complete tear down you would still have the usage for the three. The main question is can you then make it a fourth. So by asking for four now you are

asking for a use variance. That was previously denied by the board. The criteria for a use variance is quite different than an area variance. With a use variance you to show that there is no other economic usage for the property other than what you are asking to do. It has already been approved for a three family dwelling. I do not know how you would meet the criteria to get that fourth unit on a use variance, you can try but I do not think you are going to get it.

Mr. Falcone asked is it the square footage of the lot is the issue.

Chairman Fine said no it is the usage, making it four instead of a three.

Mr. Falcone said but in the code you can make it a hotel or there is other avenues you make it, which I do not think would suit the area.

Chairman Fine said it is not what you are asking for.

Mr. Falcone said I know, but I do not think is would be suitable for that area, you have the strip mall there. I think housing would be a lot better.

Chairman Fine said the neatest way to do it would be a rezoning, which we cannot do. The Town Board has to do that, but what you are asking for basically is a use variance for the fourth. What we are getting past is the first hurdle is can you rebuild the three. What we are hearing is you yes you can. What we would do tonight on that basis is not grant it at this point because we are just the starting point, we would still have to refer it back to the Planning Board and Engineering for site plan, etc. What we did not want you do is have you get there first, have you spend time and money doing that, then come here and have us say no. So we did it the other way around so at least you will have a running start at it so you know you will get pass that hurdle with us, but as far as a fourth, I do not know if you are going to be able to make a use variance out of it.

Mr. Falcone said so the process would be to go in front of Planning.

Chairman Fine said you go before Planning and present to them what you want to do. Keep in mind that you should be able to get the three dwelling units from here, getting the fourth may be an issue.

Mr. Falcone said let me ask you a question, I thought the third to do the three family, I could submit drawings as long as get the Building Department approval on drawings.

Chairman Fine said the main question we had was can you do that if you are tearing down most of the structure and we have gotten past that hurdle, now the hurdle is the fourth unit, which that is a use variance and you would have to present evidence proving the need for it.

Mr. Meisterich said there is a very specific road map for a use variance, so maybe you can go online and see use variance in NY, what does it mean. It is quite difficult.

Mr. Gregory said there are specific criteria required, you have to meet every one. So what you may want to do is to take a look at the criteria, you may also want to consult an attorney because it is a high bar. What we are saying right now is apparently we have the ability to say you can rebuild for a three-family house. What we are going to do is send it to the Planning Board, the ABACA and Town Engineer based on the fact you can build a three family. If you decide at some point that you want to try for the four family, you may do so but what we are saying is the bar is very high, the chances of getting it are very slim, just so you know that. The reason why we are doing it this way quite frankly is we wanted to get past the first hurdle. We did not want to send you to the Planning Board and the rest of the Boards unless we knew that we could say yes, you can rebuild it as a three family. But that being said we are going to refer it out to the other Boards based on a three-family house.

Chairman Fine asked Mr. Rodriguez, if he is only pursuing three-family, does he have to come back here after Planning or not.

Mr. Rodriguez said no.

Chairman Fine said so based upon that, are we required to take a vote on what we just said or is it an interpretation or what.

Mr. Rodriguez said no interpretation was ever sort. I do not think you really have to do anything on that.

The Assistant Building Inspector Mr. Fraietta said the front yard variance he still requires. Chairman Fine asked if there is any comments from the audience. Patricia McKenna and Frank Dahl spoke of their concerns and the plans for the property.

Marian Kapitancik submitted a letter and spoke of his concerns and his experience living across from the property.

Upon motion by Fine, seconded by Gregory and unanimously voted in favor by Gregory, Fine, and Meisterich, this item is adjourned and referred to the Planning Board, Engineering and ABACA.

Meeting adjourned at 7:25pm
Happy Zoning!