

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
MAY 23RD, 2024**

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 23rd, 2024. The meeting began at 6:30 p.m.

The following members of the board were present:

Gordon Fine, Chairman
Robert Fahey
John Meisterich

Also present are, Adam Rodriguez, Special Counsel, and Nisreen Khoury, Legal Assistant.

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 27th, 2024, site visits are scheduled for June 22nd, 2024. Mailings are to be sent from June 3rd to June 12th, 2024.

NEW BUSINESS

SHORT #12/24 This is an application for a renewal of an accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.
Property Address:
1300 Baldwin Rd
Section 47.16, Block 1, Lot 2
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, this item will be handled administratively.

AHMED #13/24 This is an application for a renewal of an accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.
Property Address:
1271 Fairhills Dr
Section 69.16, Block 1, Lot 10
Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, this item will be handled administratively.

CONTINUED PUBLIC HEARINGS

DAMIANO #01/24 This is an application for a special use permit for a new accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.
Property Address:
756 Hanover
Section 59.11, Block 1, Lot 19
Not open. Adjourned.

NEW PUBLIC HEARING

CUNHA #05/24 This is an application to construct a new two-family dwelling with a lot size of 10,000 sq. ft where 20,000 sq. ft is required as per

Summit Street
Section 37.19, Block 1, Lot 78
Not open. Adjourned.

section 300-21 and Appendix A of the Town Zoning Code.

SUMMA #06/24
Property Address:
356 Hallocks Mill Rd
Section 37.10, Block 1, Lot 16

This is an application for a special use permit for an accessory apartment for new owner that requires a special use permit as per 300-38 of the Town Zoning Code.

Mailings and sign certification in order.

Memo from the Assistant Building Inspector, dated May 21, 2024 states: I inspected this property on May 21, 2024 and found no violations. I have no objections to granting a renewal for a special permit

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, the application for a special use permit for an accessory apartment for new owner that requires a special use permit as per 300-38 of the Town Zoning Code was granted for a period of three (3) years.

POLCHA #07/24
Property Address:
201 Friends Rd
Section 37.15, Block 1, Lot 3

This is an application to legalize a deck with a pergola with a rear yard setback of 2 ft where 10 ft is required for accessory structures as per 300-21 and Appendix A of the Town Zoning Code.

Mailings and sign certification in order.

Kathleen and Joseph Polcha appeared before the Board.

Chairman Fine asked how long has the deck been there.

Mr. Polcha said 22 years.

Chairman Fine said was it built by you or prior owner.

Mr. Polcha said by me.

Chairman Fine said built obviously without a permit since you are here to legalize it, correct.

Mr. Polcha said it is basically 8 inches off grade at one end and about 18 inches off grade on the house end. It is not attached to the house.

Chairman Fine said you have something built on to it also. Does the stairway go on top of that as well.

Mr. Polcha said no, it is not attached to the deck at all. It leads to the deck but it is not attached.

Chairman Fine said I understand but it comes down on to the deck.

Mr. Polcha said yes.

Chairman Fine asked was the stairway built with a permit.

Mrs. Polcha said the stairway is replacing the stairway that was there when we bought the house.

Chairman Fine said the stairway whether you are replacing an old one or not needs a permit

Memo from the Assistant Building Inspector, dated May 20, 2024 states:

This is an application to legalize a deck and pergola requiring a rear yard setback of 2 ft. where 10 ft is required for accessory structures as per 300-21 and Appendix A of the Towns Zoning Code I inspected this property on May 20, 2024 and found no other violations. I have no objections to granting a relief for this legalization.

Mr. Fahey asked, the survey that is in the file, is that the original survey from 1966.

Mr. Polcha said yes.

Mr. Fahey asked was there a platform there in 1966.

Mr. Polcha said no.

Mr. Fahey said you added it 22 years ago, so there was never anything there before that.

Mr. Polcha said grass.

Chairman Fine said so that was drawn onto the survey.

Mr. Polcha said yes, I drew it in.

Chairman Fine said there 2 letters in file from the neighbor, William Thorp.

Mr. Thorp came up to speak.

Chairman Fine asked what is the nature of your objection to the application.

Mr. Thorp said it stems from when they had a new survey. I was trying to be a good neighbor all these years, they got a new survey and it turns out that an existing driveway I had that was there before I moved there 30 years ago, was about 2 to 3 inches over on their half, that is why the go the survey because when I was going to redo my driveway, they put stakes right through my driveway.

Chairman Fine asked who did the new survey.

Mr. Thorp said the Polcha's had it done.

Mr. Thorp spoke of issues with the Polcha's regarding the property line.

Chairman Fine asked when was the new survey done.

Mr. Thorp said about three (3) years ago maybe.

Chairman Fine said so you have a new survey from three (3) years ago, how come the survey in the file is dated 1966.

Mr. Polcha said there was not a survey.

Mr. Meisterich asked you just had the property corners staked.

Mr. Polcha said right.

Chairman Fine said but usually they give you a print out of what they did.

Mr. Polcha said we just wanted the property line, wanted two (2) length of the property line done.

Mr. Meisterich said but you got nothing on paper, because it is hard for us to be 100% certain your deck is exactly 2ft.10in off.

Chairman Fine said because they survey would tell us exactly where it is.

Mr. Thorp spoke about the other structures on the property including a slate patio.

Chairman Fine asked what is the use of the platform.

Mrs. Polcha said it is an eating area, a relaxing area. I has been there for 22 years without a problem. Mt. Thorp tells a nice story about my harassing him. I told him to stop putting his kitchen refuse, his recycling and his build garbage on my property line.

Chairman Fine said we really do not get into arguments between neighbors, we will hear them out but we are really not interested.

Chairman Fine said when we do an area variance, there are several factors we have to consider.

One factor, and there is no difference of importance in any varying way, but we have to consider if the project could be done in a way where it does not require a variance.

Now, here you have something that is already built. The question is what is the convenience to you versus the hardship to your neighbor, does one thing out weigh the other. Your neighbor is giving us issues that he has, I do not know exactly what the layout of the property is, a survey will help showing everything that is on the property currently. I am not sure why when they did the survey couple years ago they just did stakes and did not put it on paper. Usually if you are paying for stakes, which cost more than just a paper plat, they give you the paper as well, they are reading off of something too. Personally I would like to the updated survey.

Mr. Fahey said I agree.

Mr. Meisterich said it is important to know exactly how far this is off the property line. This is more of an estimate, I would say and I definitely would like a survey. This could be 1ft. off the property line for all I know.

Mr. Polcha said the surveyors put markers in, they put steel spikes in.

Chairman Fine said right, but we are not privy to those.

Mr. Meisterich said you did not get the documentation.

Chairman Fine said if they staked it out it should be relatively easy to give it to you on paper.

Mrs. Polcha said we not know to ask for an update.

Mr. Meisterich said well at the time you were doing it for a different reason, nut at this point it is kind of home built platform, gazebo, it is crucial.

Chairman Fine said what we are asking for is to submit to us for the next meeting a new up to date survey showing what is on the property with all the dimensions, it would give us a better idea. Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, this items is adjourned.

LYNCH #08/24 This is an application to construct an addition with a rear yard setback of 38 ft where 50 ft is required as per 300-21 and Appendix A of the Town Zoning Code.
Property Address:
1496 Heights Dr
Section 48.09, Block 1, Lot 14

Mailings and sign certification in order.

Pat Costabile representing the applicant.

Rebecca and Rosemary Lynch present.

Mr. Costabile said we are proposing to add a three-car garage and additional living space.

The three-car garage to the side of the property and then the living space is the space in question on the setback in the rear.

Mr. Fahey asked is this above the garage?

Mr. Costabile said no it is not above the garage. The house is a Cape Cod so it is only 1 1/2 stories high so doing a two-story structure on that one side will create balance.

Chairman Fine asked what side is existing, what side is being added.

Mr. Costabile said the left side, that is the whole piece being added on the left side.

Chairman Fine said the right side as you are looking at it.

Memo from the Assistant Building Inspector, dated May 20, 2024 states:

This is an application to requesting an variance for a rear yard setback of 38 ft. where 50 ft is required in an R1- 40 district as per section 300- 21 and Appendix A of the Town Zoning Code. I inspected this property on May 20, 2024 and have no objections to granting a relief.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, the application for a variance was granted to construct an addition with a rear yard setback of 38 ft where 50 ft is required as per 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line, and the addition be built in substantial conformity to the plants submitted.

SIGNS INK #10/24 This is an application for a variance for multiple signs on the front, rear and side of the building as follows:
Property Address:
335 Downing Dr Section
37.18, Block 2, Lot 56
Front(south) – 246.7 square feet facade sign, plus 2 - column signs totaling 9.4 square feet, Totaling 257.1 square feet. These signs have 111 square feet of frontage, plus is 199.7 square feet above the setback requirement that increase the allowable sign square footage by 50 square ft.

Total allowable sign 161 sq. ft

Total area of signs requested 257.1 sq. ft

Total variance requested 96.1 sq. ft

Rear(north) – A variance is required for a sign of 128.6 square feet where 111 square ft is allowed.

Side (west) – A variance is required for a sign that is 128.6

square feet where no signs are allowed.

Mailings and sign certification in order.

James Polinsky representing the applicant.

Mr. Polinsky said originally we were applying for some signs in the rear as well, but after going to Planning and them talking about screening the rear of the building that is on Saw Mill River Road there, we decided that the signs are not going to work there, the property owner is going to add screening that has been requested from ABACA as well as Planning.

Chairman Fine said so the signs are only for the front facade.

Mr. Polinsky said correct, we are scrapping the rear and the side West elevation, So we are removing those only. We are looking for the channel lettering that is on the front of the building as well as two lower, I call them sconce like, but they are on the pillar, they would be more of a ground level or car level, as they are driving they can see it. These are the only signs that we are requesting.

Mr, Meisterich said what are the small sign. The ones down below.

Mr. Polinsky said they are 14 inch tall, 4 feet wide, they are going to sit on the column and they basically just say TJ Maxx, they do not light.

Chairman Fine said you are talking about the old K-Mart building right.

Mr. Polinsky said correct.

Chairman Fine said are there not other stores going into that building as well.

Mr. Polinsky said there will be.

Chairman Fine said so where are those signs going to go.

Mr. Polinsky showed the plans for where the signs will be going.

Memo from the Assistant Building Inspector, dated May 21, 2024 states:

This was an application for multiple signs for TJ Maxx were the applicant is withdrawing the two signs on the rear of the building that required variances. The applicant is now just requesting the variance for the front as follow:

- Front(south) — 246.7 square feet facade sign, plus 2 - column signs totaling 9. 4 square feet, Totaling 257. 1 square feet. These signs have 1. 111 square feet of frontage, plus is 199. 7 square feet above the setback requirement that increase the allowable sign square footage by 50 square ft.
 - Total allowable sign 161 sq. ft
 - Total area of signs requested 257. 1 sq. ft
 - Total variance requested 96. 1 sq. ft

I have no objections to granting relief.

Memo from the Planning Board, dated May 22, 2024 states:

On May 20, 2024, the Applicant for the Yorktown Green Shopping Center informed the Board that TJ Maxx is no longer proposing the signs on the either the rear or the side of the building. The Planning Board does not support the rear sign variance of 17.6SF for a sign of 128.6SF where 111SF is allowed and side facing sign variance of 128.6SF where no sign is allowed. However, the Board has no planning objections to the variance request regarding the facade, under canopy, and column signs on the front of the building.

Memo from ABACA, dated May 10, 2024 states:

The Advisory Board on Architecture and Community Appearance reviewed the above referenced subject at their Board meeting held on Tuesday, May 7, 2024. James Polinsky of Signs Ink was present. The applicant is seeking a variance for TJ Maxx signage to be installed at their new location as follows:

1. Front of the building (South elevation)—Façade sign, plus two column signs—a variance of 96. 1 SF is required for a 246. 7SF façade sign, plus two column signs totaling 9ASF. The proposal is for the following:

- Front Façade- 5' - 6" red face lit channel letters in the words of "T.J.Maxx" to be mounted on the front of the building storefront. The overall size is 33' 9 ½ " in width by 7' 2" in height.
 - Front Columns- Two non-lit column signs in the words of " T.J.Maxx" in the colors of red and white. The overall size is 14" in height by 4' in width.
2. Front of the building (South elevation)- Illuminated under canopy sign—The overall sign size is 6' in height x 2'- 6" in width.
3. Rear of the building (North elevation)— a variance of 17. 6SF is required for a sign of 128. 6SF where 111 SF is allowed. The proposal is for the following:
- 4' red face lit channel letters in the words of" T.J.Maxx" to be mounted on the rear of the building. The overall sign size is 24' 6 ½ " in width by 5' 3" in height.
4. Side of the building (West elevation) — a variance of 128. 6SF is required where no signs are allowed. The proposal is for the following:
- 4' red face lit channel letters in the words of" T.J.Maxx" to be mounted on the rear of the building. The overall sign size is 24' 6 ½ " in width by 5' 3" in height.

The ABACA has the following comments:

- The Board has no objections to the four proposed building front signs (items 1 and 2 above).
- The Board is not in favor of the rear and side facing signs (items 3 and 4 above) as they feel it will draw unwanted attention to the rear and side of the building. The Board feels that the integration of the monument signs at the 118 intersections at Kear Street (existing) and Downing Drive (proposed) would be significantly more attractive and effective.

Mr. Polinsky said so what TJ Maxx was unclear about was whether or not they are putting a sign underneath, if it would even be allowed or fit to go there. It would be an under canopy, it would be more recessed back, pedestrian would see it if they were on the walkway. We have to see how that plays out and if it is even going to work there.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, the application for a variance is granted for two signs as stated by the applicant, that being the front side which is south, plus the illuminated sign under the canopy. The granting of the application is conditioned upon the applicant being in compliance with items 1 & 2 of the ABACA memo dated May 10, 2024.

PILLAI #11/24 This is an application to legalize an existing deck with a setback of 4.8 ft where 10 ft is required, as per Section 300-21 and Appendix A of the Town Zoning Code.
Property Address:
3786 Indian Hill Rd
Section 5.20, Block 1, Lot 3

Mailings and sign certification in order.

John Turnquist with JT2 Architects representing the applicant. Applicant also present.

Mr. Turnquist said we are here to legalize the deck that is currently on the outside of the resident. It is pre-existing comma non-conforming residence, as well as the deck.

Chairman Fine said I noticed you have four previous Zoning Board applications, this property has four different decisions already with different approvals over time. One of them not even from you it was prior ownership.

Mr. Fahey asked what year was the house built.

Mr. Pillai said it was built in 1749, it was used as a trading post until 1789 then it became a house In 1832 I think.

Mr. Turnquist said the deck is in the same plane as the residence, it is non-conforming, right on the road.

Chairman Fine said and there is nothing around them either.

Memo from the Assistant Building Inspector, dated May 20, 2-24 states:

This is an application to legalize a deck with a front yard setback of 4.8 ft. where 10 ft is required for accessory structures as per 300-21 and Appendix A of the Towns Zoning Code. Enclose four previous variances that were granted for this property. I inspected this property on May 20, 2024 found no other violations. I have no objections to granting a relief for this legalization.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, the variance was granted to legalize an existing deck with a setback of 4.8 ft where 10 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 variants and not the remainder of the property line.

76 ROUTE 6 HOLDINGS

#09/24

Property Address:

**76 Route 6 Section 6.18,
Block 1, Lot 37**

This is an application of the Planning Board under Town Code § 300-201(A) for an interpretation of Town Code § 300-97(A), specifically, whether a 200- or 100-foot setback applies to this project. In the event the 200 ft setback applies, applicant is seeking an area variance of 200 ft as per Section 300-97(A) of the Town Zoning Code.

Mailings and sign certification in order.

David Cooper with law firm of Zarin and Steinmetz representing Atrac Recycling Center the applicant before the Planning Board.

Chairman Fine instructed the audience as to the parameters of the hearing so everybody is clear from the start. This is only on for an interpretation and it is not on for a variance. It is not ripe for a variance at this time. You cannot apply for a variance once you have been denied a permit by the Building Department. So we are only on for an interpretation tonight. Now the interpretation does not say they can build it. It does not say they cannot build it. The board is only being asked to interpret what the law means. And what they are asking is whether in this zone, does the 200 foot setback apply since the abutting residential zone is not in the Town of Yorktown. The applicant believes a 100 foot setback is permissible. This particular application not only effects this particular application, it is an interpretation of the law meaning whatever we decide can also be applied to other such applications down the road, not just this one. So, I know many people here want to speak on the application but all I am telling you is we do not have jurisdiction to deny the building of the project or to grant the building of the project, that is not what this is about. So, if you want to come up and tell us that you do not like the application or you love the application it is not relevant to this proceeding.. If the usage is approved by the Town in this District, which it is, then we have no jurisdiction to say it cannot be done. It is the Town Board that creates the zoning code not the Zoning Board, we only apply it. So if you are here tonight to oppose the application based upon the fact that you don't like the application, we will hear what you have to say but again it does not have any relevance on what our ruling here is tonight. All we are ruling on tonight is the interpretation of this section of the code is it 100ft, is it 200ft.

Chairman Fine read the section of the code.

Mr. Cooper said with tonight is Margaret McManus the Project Engineer as well as Pasquale Cartalemi Jr., the Principal of the applicant.

Chairman Fine said just so you know we are not getting into the basis of your application because it has nothing to do with our interpretation.

Mr. Cooper said yes, what I was starting with is to frame the question. The question is you have already read the provision.

It is not a question of use as you said this is a special permitted use, so the use is permitted it is a question of siting that is it. From a practical perspective the applicant is proposing to site the project further to the north of the site.

Photo of the site shown

Mr. Cooper said the building inspector issued an opinion that this siting is consistent with the zoning code that it meets the 100ft. setback, that is what applies here.

Chairman Fine said the Planning Board disagreed.

Mr. Cooper said the Planning Board referred it over to you for question a that have not appeared so we are before you.

So we are asking that this Board affirm the opinion of the Building Inspector. The standard before you is whether or not there is a rational basis to that.

Chairman Fine said what is your basis for saying that it is 100 feet not 200 feet.

Mr. Cooper said four basis, but let me step back and look at the code itself.

The code itself says no building shall be located less than 100 feet from a boundaries except where any boundary "adjoins any residential district", the Building Inspector interpreted that interpreted that provision to mean the boundary itself is a boundary within the town of Yorktown.

Chairman Fine said it does not say that thou in the code.

Mr. Cooper said no but what that interpretation is consistent with first, I will get the four grounds but first New York State town law. New York state town law 261 states that municipalities that their jurisdiction ends at their boundaries lines.

Chairman Fine said the jurisdiction ends at the boundary line, all that means that we can impose our jurisdiction on another town.

Mr. Cooper said no, what that means is that the reference to a residential district ends with residential districts within the town.

Chairman Fine said under what basis do you say that.

Mr. Cooper said under first the consistency with 261. I also believe that NY State Division of Local Government adopts this same interpretation. I believe Mr. Landi can confirm that in fact that not only it is his interpretation, but the state would also interpret the jurisdiction to end there, that is why we asked him to be here, so I would hope that if not the Board, I would ask Mr. Landi.

Chairman Fine said you cannot ask, only the Board can.

Mr. Cooper said then Mr. Chairman I would ask you if you are questioning basis of that first point that you ask Mr. Landi then to confirm or not confirm. Second it is consistent with Yorktown customer practice I'm glad that you said that the proof of notice within the record because I want to make sure it is in the record, if you look at your code and if you look at who had been noticed for this hearing which was provided to us by the town Assessor's Office. The code itself indicates that only tax Lots within the town of Yorktown.

Chairman Fine said that is why you publish and that is why you have a sign posted so anybody else in the neighboring area can see that there is an application.

Mr Cooper said I would respectfully disagree with that because if you are asking an applicant to send letters out why stop at the municipal boundary except if there's a recognition.

Chairman Fine said there is no altercation in the sign it is for all to see, not just neighbors.

Mr. Meisterich said where would you have to have the information of who lives there if it is not within the town boundaries.

Mr. Cooper said Westchester GIS, for most other municipality, sends the applicant to GIS and says just generated 240 list does not matter where. Your municipality your customer of practice is your assessor providers us with the list and the list is only the town.

Chairman Fine said I would venture to guess that on the scale of whether that is dispositive or not you are kind of you are really at the bottom.

Mr. Cooper said Chairman Fine remember the standard here is rational basis

Chairman Fine said rational basis.

Mr. Cooper said if there is a rational basis then the Zoning Board, that be rational basis for the building inspector to land on an interpretation that indicates when you say residential district you mean residential district

Mr. Meisterich said if other towns do notice neighboring towns then why would they have to do that if

the state law does not require it.

Mr. Cooper said the question for the Zoning Board is how to interpret residential district that term, so when I am using that example from your town customer and practice is how your town..

Chairman Fine said we are not defining what a residential district is.

Mr. Cooper said not the definition of a residential district just is it a residential district in Yorktown boundaries or not, that is the question.

Chairman Fine said the code States 200 ft from a boundary that adjoins any residential district. It does not say a resident district in the town of Yorktown, it does not say any residential districts outside the town of with your appointment at the ambiguity because you have your building inspector and the code this way and then Yorktown, it says any resident district. That is not ambiguous it is fairly clear.

Mr. Cooper said I respectfully disagree with your claim of ambiguity because you have your Building Inspector who interprets the code this way.

Chairman Fine said whether he interprets it this way or not, no offense to our building department or anybody else it is in apposite as far as it is, we are interpreting what the code says.

Mr. Cooper said let me make the point on that one. Your question was ambiguity right, is there any ambiguity.

Chairman Fine said I did not ask the question; I made a statement.

Mr. Cooper said I am responding to your statement. There is an ambiguity in the record clear ambiguity in the record you got a Building Inspector who is charged in the first instance to make interpretations of this code who has made the interpretation, and that interpretation is 100ft.

You got a planning board who is questioning that and says that and since we have a question of it. That is two agencies in the town with divergent interpretation of this code that is by definition an ambiguity. And because zoning is in derogation of property rights any ambiguity has to be interpreted in favor of the property owner.

Chairman Fine said someone perceived ambiguity does not mean makes it the right perception.

Mr. Meisterich said by that logic any interpretation is an ambiguity right.

Chairman Fine said anytime someone says I'm not sure what you're talking about doesn't mean that it's ambiguous.

Mr Cooper said no the distinction is here you have two different agencies.

Mr. Meisterich says I kind of know where you are going, it is two different agencies within the town is relevant, but the code allow agencies within the town to seek interpretation but by your logic, anytime there is a disagreement is has got to go in favor of an applicant no matter what.

Mr. Cooper says no, just when there is an ambiguity.

Mr. Meisterich said but your definition of an ambiguity is to disagreements that is an interpretation, so like every interpretation does not result in an ambiguity.

Mr. Cooper said the question that the board is asking which is at the heart of this question is does the residential district in this term here does it refer to a residential district only in the town or does it refer to a residential district in any municipality. And you got one agency that that says that term only applies within the town boundaries, you got another agency that says we think it applies outside, that is an ambiguity. You got two agencies that are interpreting the same provision separately. And so before the Zoning Board tonight is what I would submit an ambiguity and because of the well-established law that when there is an ambiguity such as this one it has got to be interpreted.

Mr. Fahey said then why are you here, why the Zoning Board has to be interested, now that there is a third party that is going to be involved with the ambiguity.

Mr. Cooper said the Planning Board sent us here.

Mr. Fahey said so apparently, we do have the ability to render an opinion.

Mr. Cooper said I agree.

Mr. Meisterich said you are saying the law says our opinion if it is an ambiguity has to go in favor of the applicant.

Mr. Cooper said I will end where I started on the point is from a practical planning perspective the use is permitted on the site.

Chairman Fine said we are not discussing the use.

Mr. Cooper said right, it is a matter of siting. If the interpretation is it is 200 ft the building just get pushed much closer to Route 6 right now with 100 ft setback we can keep the building.

Mr. Meisterich said that is more from a variance relevant issue I would say.

Mr. Cooper said it could be but from a practical perspective what the applicant is saying hey why, and we agree with the Building Inspector that the 100-ft setback is..

Chairman Fine said I understand but like I said in the beginning to our interpretation is the code does not only apply to this application so whether it make or does not make sense to this application we have to look at what that decision will means to other applications.

Mr. Cooper said true although that provision only applies in the industrial district so you are limiting the interpretation just to your Industrial District but that is a point. We have also requested a variance I know the board want to split them up.

Chairman Fine said it is not that we want to we have no jurisdiction over a variance until it has been denied. What triggers a variance application is the denial by the building department, you have not received a denial yet so we cannot hear your variance.

Mr. Cooper said but that is the very point in that case there is no appeal before you because we agree with the Building Department Chairman Fine said it is not an appeal it is an interpretation. You did not send this here the Planning Board did.

Mr. Cooper said so if you were to tonight vote that it is a 200-ft setback automatic order application becomes arrive, it is already before you.

Chairman Fine said it is not automatic, the building department still has to issue a denial that is procedural. That is the way it is.

Mr Cooper says let us go back to the interpretation, the issue before the Board is whether or not there is a rational basis. I understand Board members maybe questioning whether or not you internally believe it or not. But that is not the standard, the standard is there a rational basis to support the Building Inspector determination, if so then I will submit that this Board should also affirm that decision.

John Landi, Building Inspector, Town of Yorktown came up to speak.

Chairman Fine said you it determination on this application correct.

Mr. Landi said correct.

Chairman Fine said and your interpretation was 100 ft, correct.

Mr. Landi said that is correct.

Chairman Fine said but we understand the reason, from council reasoning behind it. I do not have any further questions for Mr Landi, anybody else have any questions.

Mr. Fahey and Nr. Meisterich said no.

Chairman Fine asked if any questions from the audience.

Michael Grace, former supervisor of the Town of Yorktown came up and spoke to his opposition to the application.

Memo from the Planning Board dated, April 25, 2024 states:

At its meeting on March 11, 2024, the Planning Board discussed the subject project. The applicant proposes a 40,000 square foot recycling center in the I- 1 zone. The proposed building lies 100 feet from the eastern property line which adjoins a residential-zoned district in the Town of Somers.

The Planning Board believes that pursuant to Section 300-201(A) of the Yorktown Zoning Code, the building must be 200 feet from the boundary because it adjoins a residence district.

The applicant' s attorney believes that the Planning Board may not take that fact into account because the residential zone in question lies within the Town of Somers. The code contains no limiting language that indicates that a residence zone in another town adjacent the subject property disqualifies the requirement of 200 feet from being met.

Pursuant to Section 300-201(A) of the Yorktown Zoning Code, the Planning Board requests that the Zoning Board of Appeals decide the following question, " involving the interpretation of any provision of this chapter": under Section 300- 97(A) of the Zoning Code, whether or not a 200- foot or a 100-

foot setback requirement applies to the application of Atrac Recycling Center/ 76 Route 6 Holdings Inc. for Site Plan, Special Permit and Wetland Permit Approval. This referral of the Planning Board is for an interpretation of the above referenced code section only. The Planning Board does not and has not endorsed or supported any setback variances related to the layout of this proposed site plan as of this date.

Memo from the Planning Board, dated May 22, 2024 states:

At its meeting on May 6, 2024, the Planning Board discussed the subject referral. As stated in the previous memo, the Planning Board has not made any determinations on the need for a variance and awaits the Zoning Board of Appeal's interpretation of Section 300-201(A) of the Yorktown Zoning Code.

The following residents came up to make their comments:

John Marone
Jay Kopstein,
Mike Kierman
Anthony Santore
Andrea Marrone
Brooke Certinti
Howard Walter
Kathy Schwarz

Chairman Fine asked Mr. Cooper if he wants to add something.

Mr. Cooper said no, the comments, most of them were not relevant to this, what is before the Board now.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, this is Closed and Reserved.

Chairman Fine said my personal opinion is that the words of the code are clear they are not ambiguous. It says any residential district it does not say any residential district within the town of Yorktown, it does not say any residential district outside the town of Yorktown, it says any residential district which may means any town, another state it just is residential district.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Fahey, Fine and Meisterich, the Board adopts the interpretation that the town code section 300-97a that portion where it says that no building should be located the distance of less than 200 ft from a boundary which adjoins any residential district or less than 100 ft from other boundaries pertains to all district whether they are inside the town of Yorktown or outside the town of Yorktown.

Meeting adjourned at 7:50pm
Happy Zoning!