

**MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS  
SEPTEMBER 12<sup>TH</sup>, 2024**

**UNAPPROVED DRAFT MINUTES as of 9/26/2024**

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, September 12<sup>th</sup>, 2024. The meeting began at 6:30 p.m.

The following members of the board were present:

John Meisterich, Chairman  
Anthony Altimari  
Robert Fahey  
William Gregory  
Anthony Tripodi

Also present are, Christine Kager, Special Counsel, and Nisreen Khoury, Building Department 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 October 24<sup>th</sup>, 2024, site visits are scheduled for October 19<sup>th</sup>, 2024. Mailings are to be sent from September 30<sup>th</sup> to October 9<sup>th</sup>, 2024.

**NEW BUSINESS**

**HAIGHT #24/24** 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:**  
**1228 East Main St**  
**Section 16.10, Block 2, Lot 76**

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

**O'NEILL #25/24** 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:**  
**3719 Mill St**  
**Section 16.05, Block 3, Lot 2**

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

**GAZZOLA #26/24** This is an application for a special use permit to allow a chicken coop that requires a special use permit as per 300-81 of the Town Zoning Code  
**Property Address:**  
**1281 McKeel St**  
**Section 48.18, Block 1, Lot 29**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 24<sup>th</sup>, 2024, Site Visit on October 19<sup>th</sup>, 2024, and referred to the Building Department.

**NAKHLA #27/24** This is an application for a renewal of an accessory apartment that requires a special use permit as per 300-38 of the Town  
**Property Address:**  
**2717 Quinlan St**

**Section 27.13, Block 1, Lot 38** Zoning Code.

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

**BHUTTI #28/24** 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:**  
**3214 Quinlan St**

**Section 17.17, Block 1, Lot 24**

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

**ERBEN #29/24** This is an application to construct an addition and a covered front porch with a front yard setback of 37 ft where 40 ft is required per section 300-21 and Appendix A of the Town Zoning Code.  
**Property Address:**  
**914 Barberry St**

**Section 26.11, Block 1, Lot 23**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 24<sup>th</sup>, 2024, Site Visit on October 19<sup>th</sup>, 2024, and referred to the Building Department.

**LEFKOWITZ #30/24** This is an application to construct an addition to create an accessory apartment that will require side yard variances as follows: one side yard of 8 ft where 15 ft is required and a combined side yard of 26.8 ft where 40 ft is required per section 300-21 and Appendix A of the Town Zoning Code.  
**Property Address:**  
**2057 La Voie Ct**

**Section 37.13, Block 1, Lot 18**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 24<sup>th</sup>, 2024, Site Visit on October 19<sup>th</sup>, 2024, and referred to the Building Department.

**LEFKOWITZ #31/24** This is an application to create a NEW accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.  
**Property Address:**  
**2057 La Voie Ct**

**Section 37.13, Block 1, Lot 18**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 24<sup>th</sup>, 2024, Site Visit on October 19<sup>th</sup>, 2024, and referred to the Building Department.

**VELLUCCI #32/24** This is an application to construct an addition to create an accessory apartment that will require a side yard variance of 12.95 ft where 15 ft is required per section 300-21 and Appendix A of the Town Zoning Code.  
**Property Address:**  
**3675 Curry St**

**Section 17.06, Block 1, Lot 32**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 24<sup>th</sup>, 2024, Site Visit on October 19<sup>th</sup>, 2024, and referred to the Building Department.

**VELLUCCI #33/24** This is an application to create a NEW accessory apartment that requires a special use permit as per 300-38 of the Town Zoning Code.  
**Property Address:**  
**3675 Curry St**

**Section 17.06, Block 1, Lot 32**

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on October 24<sup>th</sup>, 2024, Site Visit on October 19<sup>th</sup>, 2024, and referred to the Building Department.

**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.

**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 section 300-21 and Appendix A of the Town Zoning Code.  
**Property Address:**  
**Summit Street**  
**Section 37.19, Block 1, Lot 78**  
Not open. Adjourned.

**SACCIO** #15/24 This is an application for a special use permit to allow a chicken coop that requires a special use permit as per 300-81 of the Town Zoning Code.  
**Property Address:**  
**2261 Ridge Rd**  
**Section 37.06, Block 1, Lot 4**  
Adjourned. Notices not sent.

**76 Route 6 Holdings Inc** #18/24 As per the Zoning Boards interpretation that residential districts outside of Yorktown must be considered under section 300-97(A) to determine proper setback, the applicant must request a variance for construction of a new building with a 101 ft setback from a residential district that requires 200 ft as per 300-97 and 300-21 of the Town Zoning Code.  
**Property Address:**  
**76 Route 6**  
**Section 6.18, Block 1, Lot 37**

David Cooper with the Law Firm of Zarin and Steinmetz representing ATrac Recycling Center, owner of the subject property.  
Mr. Cooper stated that this is an 18 acre parcel along Route 6 in the Town's I-1 district. The applicant is pursuing an application / Site plan application before the Planning Board to develop the property with a recycling center. It has been determined by this Board that a 200ft. setback applies. The proposed building needs 101ft. set back variance if it were in its current location. The applicant at the last meeting did go through the record, go through the factors, etc. You did open a public hearing I believe you accepted statements as well. Since that time we do not have anything further to submit. We believe we rest on the record, assures that the potential detriment with respect to this setback would be far outweighed by the benefit by allowing the building up the hill as we say rather than an as of right situated closer to Route 6. Based on that, we do not have anything further other than to ask the Board to vote tonight on the request.

Mr. Tripodi asked where is the application with the Planning Board?

Mr. Cooper said we are processing the site plan application. We have submitted materials back in June and then July; the Planning Board has not put us on the agenda since.

Mr. Fahey said I do not think we are in a position to make any decision without the Planning Board information.

Mr. Cooper said we made a request back in July to appear before the Planning Board. Planning Board took us off of the agenda and this application has been on the agenda since. I believe your Board asked the Planning Board for an opinion with respect to whether they would prefer it up on the

hill, which would require this variance, or as of right below which would be closer to Route 6. It has been two (2) months and they have not responded, so we respectfully state that the record is complete and you have asked for a recommendation, they have not given it to you, we cannot be held with our hands behind our backs and not moving forward.

Chairman Meisterich said going through the memos in the file just to kind of reiterate what you stated. We did have a memo from Planning last month but it basically said we do not have enough information to provide a recommendation. Our normal process on a complicated project like this, the Planning Board and the applicant would negotiate most of the parameters of the project, the site. The Planning Board takes into account many, many factors and at the point in time they usually issue a memo recommending a variance because the negotiated plan is superior to a plan that does not require a variance. Now last month your colleague and Mr. Steinmetz were very clear in saying that you have the ability to put the building within compliant setbacks, which would mean placed close to Route 6, and that in your opinion it was superior to put the building on the northern leg of the property. Again we really just do not have anything from Planning to substantiate whether those claims are, I would not call them not true or true, but have to consider the entirety of the project, and the planning board recommendation is usually a huge part of the basis of what we approve or disapprove a variance.

Before we get to much further, there are a few memos, I may read at least one of them from the Department of Transportation (DOT) because it does concern the traffic study and you may not have seen this.

Mr. Cooper said we have seen it. The only thing I would say with respect to DOT's comment, is that it is not necessarily relevant to the variance request, because regardless of where the building is, that study is going to occur from the Planning Board during the SEQRA process.

Mr. Fahey said if I am understanding things correctly, I believe Planning Board has the right to either approve your plan in its entirety or could put restrictions on it and make you modify it. Is that my understanding, am I incorrect in thinking that way.

Mr. Cooper said as long as it is based on the evidence of record, sure.

Mr. Fahey said obviously, but we have none of the information right now, we do not know what the Planning Board is thinking, so for you to ask us reasonably to vary the property, we do not know what is going to go forward, what is going to be approved, what is not. So it is kind of unreasonable I think, for you to be asking us to make a decision, even though you have not heard from the Planning Board. If any Board is really the lead agency on this, they got to give us the feedback that we need.

Mr. Cooper said it is not just a matter of not hearing from the Planning Board, they have taken us off the agenda and have not allowed us to come back.

Mr. Fahey asked is there a reason for that.

Mr. Cooper said I do not know. So, the issue from us as an applicant standpoint, from a due process perspective. I understand what you are saying, "look we would like to hear from the Planning Board so we cannot vote on your application."

Chairman Meisterich said the Planning Board has not indicated to us that they are waiting for us to render a variance before they even allow you on their agenda. I have no idea why they have taken you off the agenda. I do not believe it has anything to do with them waiting for our decision. Mr. Fahey asked counsel if she can find out what is happening with the Planning Board.

Chairman Meisterich said if for example, saying we need to hear from Zoning before we can even start negotiating the project that would be very different than how they have handled every other project that I have ever seen. So I do not believe, and they have not sent a memo to the effect that they are waiting for us, and I am not sure what the advantage to you for us to call a vote right now, it would be absent the Planning Board plan, your negotiated plan.

Mr. Cooper said it is not a matter of advantage, it is a matter of procedural rights. This is an applicant that is standing before your Board that is saying, look we have applied, paid the fees, we submitted the materials, etc. Seeking a determination or variance, your Board has said in its discretion we want to hear from the Planning Board. Whether or not that is from a procedural prospective, we would reserve all rights on whether or not that is procedurally appropriate, that is what you are saying now. We are now before you to say we have tried, we asked to get on the agenda, so procedurally we are at a position where the record is from a legal perspective, with respect to the variance complete, and so you are procedurally in a right position to vote.

Chairman Meisterich said I think it limits your option on the property so to speak, obviously if we granted the variance it does not limit anything, but if we were to deny it, and then what happens if the Planning Board says this (the plan requiring a variance), would have been better, then you do not have that ability anymore.

Mr. Cooper said we do not have that ability if this Board does not issue the variance. So at the end of the day, the buck does stop here.

Mr. Fahey said I do not agree with that at all.

Chairman Meisterich said that is true, we do issue the variances, however, we greatly consider the Planning Board input.

Mr. Fahey said I think in this instance, it is required. If they have their input our discretionary point of whether it is 100ft or 200ft., we do not have enough information to say whether or not, and I know there are numerous questions that are being asked. I cannot tell you what the Planning Board should or should not do, but I am pretty sure they are going to be interested in your project and I would like their input before I make my decision.

Mr. Cooper said I respect that.

Mr. Tripodi said another point, we usually get referrals from the Planning Board, we have not gotten one which is unusual here.

Mr. Cooper said this is an appeal from a denial application because of the referral in this instance. Procedurally it is right for a decision. If this Board is saying they are not making a decision until we hear from the Planning Board, so be it.

Chairman Meisterich said we have the memo from the DOT, it is basically asking so see more information from the traffic study that you will provide.

Chairman Meisterich open the floor for comments from the public. The following residents came up and make their comments in opposition to the application and questions about the project.

John DelVecchio  
John Cammarano  
Howard Gould  
Jay Kopstein

Michael Kiernan  
Brian Selic

Joanne Selic read an article from the Northern Westchester Examiner with comments from Planning Board member, William LaScala.

Letter submitted to the file in objection to the application from Genc Vukaj; Ralph Anderson; Jennie Sunshine and Arlene Rivera.

Mr. Cooper said let us talk about the scope here again. The question before this Board is, is the building located 101ft. or 200ft. from a residential district. That is it, and the only thing I would say that was brought up with respect to due diligence. Remember your Building Inspector, the Town Building Inspector opined that the 100ft. setback would apply here. Yes, your Board was asked for an interpretation and you interpreted it differently, but the question was day one when the applicant was looking and doing its due diligence, the Building Inspector also agreed. So it is not as if you knew this was going to happen.

Chairman Meisterich said people in opposition to the variance have stated that this was self-created hardship and basically you are arguing that it was not, because the applicant had the building inspector's determination that 100ft. was acceptable.

Mr. Cooper said the other issue with respect to regulatory oversight, noise, this is not part of your analysis because the hill, that is still somebody else jurisdiction. If you think you guys are going to be tough on ATrac you should see the Department of Conservation (DEC). The DEC is really the primary regulator of these types of uses. They just updated their regulations. The DEC has to have a desk on this site because they perform spot inspections when they want to. They have to report back every single week, take track of every single truck that comes in, what was in it, what was there, and if anything is in there that is not supposed to be recycled. That is all regulated, it is not as if it would be a free for all. I say that only because it is easy to get up to the microphone and say all these things and it is not responded to. Putting all that aside, what is before the Board is a request for the variances, we understand you are saying you want to hear from the Planning Board. We would respectfully object, but at this point we would ask to close the public hearing and vote.

Chairman Meisterich said I think many of the comments raised by the public, even the newspaper comments that were read in, describe the Planning Board process which is to do a very detailed analysis of any project, including stormwater, including environmental review, including reviewing the traffic study in detail. There may be slight confusion in the sense that we grant the variance but the Planning Board is the body that approves the project, and I guess my concern is that we are stepping forward and approving some part of the project or even disapproving some part of the project before the Planning Board has really done its process. I do not see the benefit to anybody in doing that, to the Town, to the applicant. I do not see the benefit of us forcing a decision before the Planning Board has given any substantial input to the nature of this project.

Mr. Tripodi said I would like to supplement that and read from the July 25, 2024 memo to the Zoning Board from the Planning Board, the conclusion was :” Therefore, the Planning Board, without reaching a stage in the planning process that would afford it the data and knowledge to put forth a site layout that is most appropriate for the site and least impactful to the surrounding neighborhoods, and Yorktown at large, the Planning Board cannot make an informed recommendation as it regards the instant application for setback variance. As is custom and practice, the Planning Board would prefer to make recommendation to the Zoning Board of any required variances, once it has certainty that it has designed an effective and supportable site plan and the required variances clearly support those plans”. I do not think this issue is ripe for making a decision at this time.

Mr. Fahey said absolutely, I agree.

Chairman Meisterich said our options are to adjourn it to get that input which is more of our typical process, now that limits our Board although I would say in that let us say the Planning Board does come up with a plan and the applicant is agreeable to it, what if we are not agreeable to it, we are then doing a great disservice to the applicant. This is one side of the argument to say we are more or less going to be forced to do what the Planning Board says.

Mr. Gregory said at this juncture there too many questions that have not been resolved. We know that there is going to be some consideration of changing regulation to begin with that we do not know where we are going.

Mr. Fahey said and that is truly is the issue, we do not know what the conformity, where they are going to buy this whole package as presented or require any changes, so I agree.

Mr. Gregory said I guess what I am going to say and I agree with Bob (Member Fahey) in terms of what he is saying. I think it is a little premature for us to Close and Reserve because that put us in a position of necessarily having to make a decision that may or may not be correct as time goes on.

Upon motion by Gregory, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, this item is adjourned until the Board get further information from the Planning Board and the Town Board.

### **NEW PUBLIC HEARING**

**DAVIS #21/24** 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:**  
**90 Timberlane Ct**  
**Section 47.16, Block 1, Lot 2**

Mailing and sign certification in order.

Memo from the Assistant Building Inspector, dated September 12, 2024 states:  
This is an application for a renewal of special permit for an accessory apartment as per 300- 38 of the Towns Zoning Code. This property is in the R1- 20.

Assistant Building Inspector Richard Falcone inspected this property on September 11, 2024 and found no violations. I have no objections to granting a renewal for a special permit.

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

**ALVORD #22/24** This is an application to construct a new garage over an existing footprint of a garage with a side yard setback of 3.6 ft where 15 ft is required per section 300-21 and Appendix A of the Town Zoning Code.  
**Property Address:**  
**595 Madison Ct**  
**Section 37.09, Block 1, Lot 12**

Mailings and sign certification in order.

Philip Pandolfo appeared before the Board. He said we are looking to tear down the old garage and

build a new garage.

Mr. Tripodi said but there is an existing garage.

Mr. Pandolfo said yes.

Mr. Gregory said and it is going essentially in the same location.

Mr. Pandolfo said yes, maybe a little bigger.

Mr. Tripodi asked bigger how?

Mr. Pandolfo said 1ft. wider towards the house and about 4ft. back further, but the distance from the border of the property remains the same.

Mr. Gregory asked how long do you think the garage has been there.

Mr. Pandolfo said I have no idea when the house was built in the 30s.

Mr. Gregory asked how long have you owned it?

Mr. Pandolfo said I do not own it my girlfriend does, she has been there since 1993.

Chairman Meisterich said so it is being raised higher Is that a full floor.

Mr. Pandolfo said It is to clear car lifts. We are putting lifts in, so they need 10ft. wall minimum and we went with 11ft. just for safety.

Memo from the Assistant Building Inspector, dated September 9, 2024 states:

This is an application to construct a new garage over existing footprint of a garage with a side yard setback of 3' 6" ft. where 15 ft is required as per section 300- 21 and Appendix A of the Town Zoning Code.

I inspected this property on September 9, 2024 and found no apparent violations. I have no objection to granting relief. This application requires a building permit and a certificate of occupancy.

The Board discussed the application and applied the statutory factors.

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, the application for a variance was granted to construct a new garage over an existing footprint of a garage with a side yard setback of 3.6 ft where 15 ft is required 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 be built in substantial conformity to the plans submitted.

<b>CICERO</b>	<b>#23/24</b>	This is an application for a variance for a combination of wall and
<b>Property Address:</b>		a fence with a height of 7.5 located along the front property line
<b>1575 Journey End Rd</b>		where 4.5 ft is allowed per 300-13F and Appendix A of the Town
<b>Section 69.10, Block 1, Lot 15</b>		Zoning Code.

Mailings and sign certification in order.

Bridget Cicero appeared before the Board.

Chairman Meisterich said I take it that this is the existing fence that is on the wall.

Ms. Cicero said yes, it is the same fence.

Mr. Fahey said you are not extending it, it is just that section that is existing. Now you are running it further down.

Ms. Cicero said I am adding some sections on to the other end basically to block the headlights coming up the hill.

Photos of the fence will be placed was shown.

Memo from the Assistant Building Inspector, dated September 9, 2024 states:

The applicant is requesting a variance for a combination of wall and a fence with the height of 7' 6"



along the front property line where 4' 6" is the maximum allowed as per section 300- 13F of the Town Zoning Code

I inspected this property on September 9, 2024 and I have no objection to granting relief.

The Board discussed the application and applied the statutory factors.

Upon motion by Meisterich, seconded by Fahey and unanimously voted in favor by Altimari, Fahey, Gregory, Meisterich, and Tripodi, the application for a variance was granted for a combination of wall and a fence with a height of 7.5 located along the front property line where 4.5 ft is allowed per 300-13F and Appendix A of the Town Zoning Code.

Granted with the stipulation that it pertains only to the requested variance and not the remainder of the property line, and the fence be built in substantial conformity to the plans submitted.

Meeting adjourned at 7:41pm

Happy Zoning!