

ZONING BOARD OF APPEALS

TOWN OF LEWISBORO

MINUTES

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, October 1, 2008 at 8:15 p.m., at Onatru Farm, 99 Elmwood Road, South Salem, New York 10590.

Board Members: Present: Geoffrey Egginton
Chairman
Carolyn Mandelker
Thomas Casper
Robin Price, Jr.
Jason Krellenstein

Absent: None

Also in Attendance: Alex Posadas
ZBA Secretary

The Meeting was called to order at 8:15 p.m. Chairman Egginton introduced himself and the Board members; Mr. Krellenstein, Mr. Price, Mr. Casper and Ms. Mandelker.

Chairman Egginton announced that in the preparation of a Resolution, a decision is drafted from the minutes of all Public Hearings on a particular application; therefore, it takes approximately thirty to forty-five days to prepare a Resolution.

Chairman Egginton announced that the next ZBA Meeting will be Wednesday, October 29, 2008 with a site walk scheduled for the morning of Saturday, October 25, 2008. He stated that the site walk is part of the public hearing and all interested parties may attend.

Review and adoption of the Minutes of the ZBA meetings of July 30, 2008 and August 20, 2008 were held. Chairman Egginton moved to approve the minutes as amended. The motion was seconded by Ms. Mandelker; In favor: Mr. Krellenstein, Ms. Mandelker, Mr. Casper, Mr. Price and Chairman Egginton; Absent: None; Abstained: None;

Decisions- (Tentative)

CAL. NO. 08-07-BZ Wendy Gennimi, 19 Lower Salem Road, South Salem, NY 10590

Application for a variance of Article III, § 220-12E (b) (d) of the Zoning Ordinance in the matter of existing fencing (actual 151 feet) which is longer than 100 feet in length on the street than permitted in an R-1A, One Acre Residential District. Violation dated November 14, 2006.

The property is located on the east side of Lower Salem Road, designated on the Tax Map as Sheet 32C, Block 10819, Lot 15, in an R-1A, One-Acre Residential District.

No one was present to represent the applicant.

Chairman Egginton stated that this matter will be adjourned until such time that litigation in the Supreme Court in White Plains involving the applicant and the Town is resolved.

CASE ADJOURNED.

CAL. NO. 25-07-SP Douglas K. Paulding, 20 Wakeman Road, South Salem, NY 10590 [Owner of record: Linda B. Paulding, 20 Wakeman Road, South Salem, NY 10590]

Application for the renewal of a Special Permit pursuant to Article V, Section 220-38 of the Zoning Ordinance to authorize the storage of Contractor's Equipment.

The property is located on the south side of Wakeman Road, designated on the Tax Map as Sheet 47C, Block 10066, Lot 15, in an R-2A, Two-Acre Residential District.

No one was present to represent the applicant at the meeting.

Chairman Egginton stated that this matter will be adjourned until such time that litigation involving the applicant and the Town is resolved.

CASE ADJOURNED.

CAL. NO. 55-07-BZ Teo Siguenza, 460 Old Post Road, Bedford, New York 10506 [Owners of Record: Carroll and Laurent Paulhac, 65 Chapel Road, Waccabuc, New York 10597]

Application [1] for a variance of Article IV Section 220-23A(1) of the Zoning Ordinance in the matter of a proposed 2 story, 9702 square foot single family residence where only 1 one-family detached dwelling per lot is permitted in an R-2A, Two-Acre Residential District. [2] a variance of Section 280A of the Town Law in the matter of the proposed construction of a one family residence which does not have frontage on a road which is improved to the satisfaction of the Town, said parcel consisting of 6.11 acres.

The property is located on the north side of Chapel Road, designated on the Tax Map as Sheet 23, Block 11154, Lot 22 in an R-2A, Two-Acre Residential District.

No one was present to represent the applicant.

Chairman Egginton stated that the public hearing was opened in November of 2007 for 3 applications. He stated that one application was denied and one application was withdrawn with prejudice. Chairman Egginton stated that the applicant needs to submit revised materials.

THE PUBLIC HEARING IS HELD OPEN.

CAL. NO. 23-08-BZ

Michael and Mary Ann Albanese, 206 Smith Ridge Road,
South Salem, New York 10590

Application for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the construction of a shed closer to the front lot line (existing 27 feet where 50 feet is required) than permitted in an R-2A, Two-Acre Residential District.

The property is located on the west side of Smith Ridge Road, designated on the Tax Map as Sheet 45A, Block 9827, Lot 135, in an R-2A, Two-Acre Residential District.

Mr. Albanese was present at the October 1st meeting.

Chairman Egginton stated that a site walk was conducted on the morning of Saturday, September 27th. He asked if anyone wished to comment on the site walk.

Mr. Price stated they looked at the shed which is too close to the front line because the owner was asked to move it further from the wetland buffer, so either way there was an issue. He stated that the shed is not large and the owner explained that he would provide some screening.

Chairman Egginton stated that this application was referred to the ZBA by the building department based on an Order to Remedy for the reason that the shed was too close to the front lot line. He stated that they did visit the site and discussed several suggestions.

Mr. Albanese stated that they already purchased several rhododendrons to plant.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded.

Chairman Egginton moved that the application be approved as presented subject to the following conditions:

- Add asphalt shingles to the shed to match the house.
- Provide low plantings to screen the concrete block foundation.
- Paint the shed an earth tone shade similar to match the faded wood pieces.

- That there will be no undesirable change in the character of the nearby property;
- That there is no alternative to request a variance because the only alternative would place the shed within the wetland buffer;
- That the area variance is reasonably significant, but it is a small shed;
- That there will be no adverse environmental impact;
- That the difficulty is not self-created;

The motion was seconded by Mr. Casper; In favor: Mr. Casper, Ms. Mandelker, Mr. Price, Mr. Krellenstein and Chairman Egginton. To Deny: None; Abstain: None; Absent: None;

CASE ADJOURNED.

CAL. NO. 24-08-SP
NY 10590

Greg and Daphne Tebbe, 92 Bouton Road, South Salem,

Application in the matter of a Special Permit pursuant to Article V § 220-40 of the Zoning Ordinance in the matter of an existing accessory apartment in an existing accessory building in an R-1A, One Acre Residential District.

The property is located on the north side of Bouton Road, designated on the Tax Map as Sheet 32B, Block 10804, Lot 33, in an R-1A, One-Acre Residential District.

No one was present at the October 1st meeting to represent the applicant.

Chairman Egginton read a letter dated 9/9/08 from the applicant requesting a withdrawal of the application.

Mr. Krellenstein moved that the application to withdraw the application be approved.

The motion was seconded by Chairman Egginton; In favor: Mr. Casper, Ms. Mandelker, Mr. Price, Mr. Krellenstein and Chairman Egginton. To Deny: None; Abstain: None; Absent: None;

CASE ADJOURNED.

CAL. NO. 25-08-BZ

Gloria Stein, 6 Out Post Road, Katonah, New York 10536

Application for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the proposed construction of a deck closer to the rear lot line (proposed 14 feet where 30 feet is required) and the proposed construction of a front entry way addition closer to the front lot line (proposed 24.7 feet where 30 feet is required) than permitted in an R-½A, One-Half Acre Residential District.

The property is located on the south side of Out Post Road, designated on the Tax Map as Sheet 9A, Block 10790, Lots 13-26, in an R-½A, One-Half Acre Residential District.

Ms. Stein was present at the October 1st meeting.

Chairman Egginton stated that a site walk was conducted on the morning of Saturday, September 27th. Chairman Egginton stated that they did notice that construction had commenced on the proposed application which is an unusual sequence of events, without issuance of a building permit and without issuance of the zoning variances. Chairman Egginton stated that the Building Inspector went out to the site and issued a Stop Work Order. He stated that there are two issues to deal with; the first is the building permit issue which technically can not be issued without the granting of the variance. Chairman Egginton stated that the second issue is the granting of the variance itself. He stated that the variance request should have been made prior to the actual construction and the variance would be either issued or denied based on the merits. He asked if anyone wished to comment on the site walk.

Mr. Price stated that the Chairman covered it all.

Chairman Egginton stated that he does not have a problem with granting those variances, they are relatively modest and both will be an improvement to the home. He stated that it disturbs him that this was done and the applicant needs to adhere to the rules.

Mr. Price stated that they saw what had already been built. He stated that he is concerned with the stone wall in the back because judging by the size of the stone wall; the proposed deck will be larger than it is supposed to be.

Ms. Stein responded that there is no deck only a stone wall.

Mr. Price responded that the stone wall will be supporting the deck. He stated that he is concerned about the size of the deck based upon the location of the stone wall.

Ms. Stein stated that the supports of the deck will be sitting on the stone wall. She stated that it will be a small deck, actually smaller compared to the deck that was taken down. Ms. Stein stated that she has limitations to the placement of the deck to the windows and entrance to the deck. She stated that it is only the corner of the deck that sits in the setback. Ms. Stein stated that she is limited in options.

Mr. Price stated that what he is trying to avoid is that since she did not have a building permit for the work and it was not inspected, we don't know what size the deck actually will be. He stated that he does not want the applicant to return in 2 months because the deck is bigger.

Ms. Stein stated that there is nothing that has been poured.

Chairman Egginton stated that it is a 30 foot setback from the rear lot line and the applicant requested 14 feet which is a 50% encroachment. He stated that looking at the property behind the house there is virtually nothing there. Chairman Egginton stated that according to the drawings the deck looks to be 9'8".

Ms. Stein stated that it is the rear lot line that is an issue not the side.

Chairman Egginton stated that it is an odd shaped lot.

Ms. Stein stated that it is really just the corner of the deck that is too close to the setback.

Chairman Egginton stated that there is an additional stair of 3'4" so we are talking about 14'.

Mr. Price stated that if this is the size it actually is, it's fine. He stated that he is trying to prevent the applicant from returning in a few months to rectify the matter.

Ms. Stein stated that the deck will sit on the stone wall, there is no cantilever.

Mr. Casper stated that the ZBA is only approving the plans.

Chairman Egginton stated that they are only approving the request for the variance.

Mr. Krellenstein asked if the Building Inspector issued a Stop Work Order.

Ms. Stein responded yes. She stated that she was not going to continue with the work. Ms. Stein stated that she could not go through another winter or spring with a wet basement.

Mr. Krellenstein asked what the conditions to the Stop Work Order are.

Ms. Stein stated that all she got was the Stop Work Order and she was not going to do anything anyway.

Chairman Egginton stated that the applicant excavated the existing foundation and installed footing drains and waterproofing which does not require a building permit but at the same time you had the excavator build this foundation. He stated that they have very strict laws and the footings, rebar and foundation need to be inspected to save the applicant from future structural failure. Chairman Egginton stated that it would have been easier to file the paperwork first.

Mr. Krellenstein asked if one of the conditions to lifting this Stop Work Order is the granting of the variance.

Chairman Egginton stated that in order to expedite things. He stated that the applicant received the Stop Work Order because a building permit had not been issued. Chairman Egginton stated that the footings and foundation had not been inspected and they need to be but that is the purview of the building department.

Mr. Krellenstein stated that the issuance of the Stop Work Order gives him pause. He stated that he does not want to grant a variance if it is inconsistent with something the Building Inspector requires or something that has to be remedied.

Chairman Egginton asked the applicant what the Building Inspector said.

Ms. Stein stated that Mr. Bauer, Deputy Building Inspector stated that she would be receiving a letter in the mail. She stated that she can not continue the work until she has the variance.

Mr. Casper stated that anything that the ZBA does would not override the building department. He stated that in effect what the ZBA is approving are the plans. Mr. Casper stated that if there was a formal notice the building department should have made the ZBA aware prior to tonight.

Chairman Egginton stated that he agrees with his fellow Board Member. He asked if any of the Board Members wanted to place conditions on the approval. Chairman Egginton

stated that the request is for 2 area variances the proposed construction of a deck closer to the rear lot line, proposed 14 feet where 30 feet is required and the proposed construction of a front entry way addition closer to the front lot line, proposed 24.7 feet where 30 feet is required.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded.

Chairman Egginton moved that the application be approved as presented for the following reasons:

- That there will be no undesirable change in the character of the nearby property;
- That there is no practical alternative to request a variance because the house is legally non-conforming;
- That the area variance is relatively substantial in the rear;
- That there will be no adverse environmental impact;
- Can not comment if the difficulty is self-created;

Chairman Egginton stated that the Stop Work Order may not be lifted until the Resolution is issued.

The motion was seconded by Ms. Mandelker; In favor: Mr. Casper, Ms. Mandelker, Mr. Price, Mr. Krellenstein and Chairman Egginton. To Deny: None; Abstain: None; Absent: None;

CASE ADJOURNED.

PUBLIC HEARINGS

CAL. NO. 26-08-BZ Hagele Architects, 62 June Road, North Salem, NY 10560
[Owner of Record: Susan Annar, 71 Cove Road, South Salem, New York 10590]
Application for [1] a variance of Article III § 220-9D(1)(2) and [2] Article IV § 220-23E of the Zoning Ordinance in the matter of the proposed construction of an addition that will be closer to the side lot line (proposed/existing 5.1' where 12' is required) and to the rear lot line (proposed/existing 13' where 25' is required) and that will result in an increase in non-conformity other than use than permitted in an R-¼, One Quarter-Acre Residential District.

The property is located on the south side of Cove Road, designated on the Tax Map as Sheet 33A, Block 11366, Lots 7, in an R-¼A, One- Quarter-Acre Residential District.

Chairman Egginton asked if anyone objected to the notice as it appeared in the Lewisboro Ledger. No one responded.

Mr. Hagele was present and accompanied by Ms. Annar at the October 1st meeting. Mr. Hagele stated that the Board is familiar with this project. He stated that they are seeking a variance from the side and rear yard setback requirements and for building on a non-conforming lot. Mr. Hagele stated that a variance to reconstruct the previously existing

structure was granted by the ZBA on July 30, 2008. He stated that similar area variances were granted by this board on October 26, 2005 and on September 26, 2007 those area variances were granted on this exact design. Mr. Hagele stated that the proposed structure is a modest house, approximately 1,800 square feet, including the two porches. He stated that the proposed structure will contain the same number of bedrooms (3) and the same number of bathrooms (2) as the existing house. Mr. Hagele stated that the requested variance will not produce an undesirable change on the character of the neighborhood; most of the other houses are of a similar or larger size. He stated that there will be no detriment to nearby properties as a result of the granting of the proposed variances as the request is in keeping with the nature and character of the neighboring houses. Mr. Hagele stated that all of the abutting and opposite neighbors have previously been shown the proposed drawings and have indicated their approval of the project. He stated that he is not aware of any objections to the proposed design, either written or orally. Mr. Hagele stated that the benefit sought can not be achieved without the granting of these variances due to the size of the property and the location of the existing septic system and the existing well. Mr. Hagele stated that the existing property is non-conforming, consisting of less than 1/8 Acre where 1/4 Acre is required, but even as such, the proposed building coverage is <18% where 25% is permitted. He stated that the previously existing building setbacks were non-conforming and, with the exception of the proposed 12 inch projection on the second floor. Mr. Hagele stated that the proposed variance will have no adverse impact on either physical or environmental conditions in the neighborhood.

Chairman Egginton stated that he met with the secretary to the ZBA as well as the Building Inspector yesterday. He stated that he reviewed the files to make sure he was clear about the conditions of the previous resolution. Chairman Egginton stated that he was satisfied, as well as the Building Inspector with respect to the spirit and the letter of the resolution. He stated that the applicant complied by submitting plans of the existing house and the ZBA will not request a building permit on that application because it is not their intention to build exactly that house. Chairman Egginton stated that the applicant did have approval and sign off from the Department of Health on the original drawing. He stated that the resolution requests that the existing house be signed off by the DOH, but he does not have a problem with that because the DOH signed off on the proposed addition which is essentially the same. Chairman Egginton stated that he and his fellow Board members do have concerns and the town code needs to address some of these issues particularly with undersized lots and Acts of God. He stated that he is leaning to granting this variance. Chairman Egginton asked if any Board member wished to be heard.

Mr. Casper asked what the Department of Health approved.

Mr. Hagele stated that the Health Department approved the existing building being converted to this.

Chairman Egginton responded that what they approved was the second application from 2007. He stated that Mr. Hagele submitted this request for a variance when the house still

existed and in that application, there were signed drawings approved as a renovation from the Department of Health. Chairman Egginton stated that since the proposed design and reconstruction are identical to what was previously going to be renovated, the Building Inspector did not have a problem with it. He stated that technically the DOH approved it in 2007 and that was satisfactory to the Building Inspector.

Mr. Casper stated that the approval was to reconstruct the house as it was and the building department will make sure that is the case. He stated that the ZBA would approve the addition to that pre-existing building.

Chairman Egginton stated that he asked Peter Barrett specifically if it was acceptable and he responded yes.

Mr. Casper stated that it does no good that Peter Barrett is not here tonight because it puts the Chairman on the spot as interpreter for the building department. He stated that the building department formally approved the reconstruction of the house and should send the ZBA a memo. Mr. Casper stated that these are the same exact plans that the ZBA approved a year ago. He stated that he hopes the Town Board will pass an ordinance that says the Building Inspector will certify what was there or issue a building permit for the reconstruction of what was there in conjunction with ZBA approval. Mr. Casper stated that at that point, if the applicant wants to add something they return to the ZBA for a variance. He stated that if the Board feels it is unique enough, he would just like to differentiate enough so that the ZBA does not have another scenario taking advantage of the decision.

Mr. Hagele stated that the plans are drawn from field measurements and represent exactly what was there.

Chairman Egginton asked if the plans were signed and sealed.

Mr. Hagele responded yes.

Chairman Egginton stated that he could make it a condition of the variance to request a memo.

Mr. Casper stated that perhaps the issuance of a building permit would indicate this is a reconstruction of X and addition of Y.

Chairman Egginton responded that Peter was reluctant to issue a permit because it would require the applicant to submit all of the contract documents for the existing house to make sure it is in compliance with the life safety code issues and fire exits.

Mr. Hagele responded that he could not do that because the existing house windows did not meet egress.

Chairman Egginton stated that he did not see the necessity of going through that.

Mr. Casper asked what they will do next time.

Chairman Egginton responded that they would look at the application based on its merits. He stated that he will contact the Town Board to address the ordinance.

Chairman Egginton asked if any Board member had comments.

Mr. Price stated that a memo to the Town Board was a good idea and it should be reflected in the record.

Chairman Egginton stated that it is a 3 bedroom house.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded.

Chairman Egginton moved that the application be approved as presented for the following reasons:

- That there will be no undesirable change in the character of the nearby property, it would be an improvement to the site and the neighborhood;
- That there is no practical alternative to request a variance;
- That the area variance is relatively substantial, it is necessary under the circumstances;
- That there will be no adverse environmental impact on the neighborhood in spite of the fact that the house is on an undersized lot and the applicant has pointed out the site coverage is 18% where 25% is allowed;
- Can not comment if the difficulty is self-created;

Subject to the building department providing a memo stating that the existing house drawings as submitted are acceptable for the conditions of the previous resolution.

The motion was seconded by Mr. Krellenstein; In favor: Mr. Casper, Ms. Mandelker, Mr. Krellenstein and Chairman Egginton. To Deny: None; Abstain: Mr. Price; Absent: None; **CASE ADJOURNED.**

DISCUSSION

Mr. Krellenstein asked if Mr. Brancati had asked the ZBA to comment on proposed legislation. He stated that at this time the legislation may not be ready for comment because it is not finalized. Mr. Krellenstein stated that he understands from a Town Board hearing on the matter that the legislation is subject to modification. Mr. Krellenstein suggested that the ZBA could have this as an agenda item for the next ZBA meeting in the event that between now and then it does ripen as an appropriate matter for the ZBA to comment on.

Chairman Egginton stated that he is not certain that it is appropriate to have the matter as an agenda item during a public hearing. Chairman Egginton stated that it is a matter of

the volunteer boards commenting on the proposed amendments to the town law.

Mr. Krellenstein stated that he defers to the Chairman on how it is appropriate to handle it. He stated that he wanted to know if the ZBA were asked and the form and nature of the comment would be subject to discussion.

Chairman Egginton responded that the comment period would be best at a Town Board meeting.

Ms. Mandelker responded perhaps the ZBA might draft a response.
The meeting was adjourned.