**ZONING BOARD OF APPEALS**

**TOWN OF LEWISBORO**

**MINUTES**

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, September 28, 2016 at 7:30 P.M., at the Town of Lewisboro Offices at Orchard Square, Cross River, New York 10518.

Board Members: Present: Robin Price, Jr. Chairman

 Jason Krellenstein

 Todd Rendo Carolyn Mandelker

Absent: Thomas Casper

Also Present: Aimee Hodges, ZBA Secretary

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The Meeting was called to order at 7:30 P.M. Chairman Price introduced the members of the Board and noted the emergency exits. He announced that the next ZBA meeting is scheduled for Wednesday, October 26, 2016 with a site walk scheduled for Saturday, October 22nd.

**I. Review and adoption of the Minutes of July 27, 2016**

Mr. Krellenstein moved to adopt the minutes of July 27, 2016. The motion was seconded by Mr. Rendo; In Favor: Mr. Krellenstein, Chairman Price, Mr. Rendo and Mrs. Mandelker. Absent: Mr. Casper

**II. PUBLIC HEARINGS**

**Cal. No. 18-16-BZ**

**Application of Michael Fuller Sirignano, Esq., 892 Route 35, Cross River, NY [Contract Vendee: 1410 Route 35, LLC (Elegant Banquets, LLC), 506 Candlewood Lake Rd., Brookfield, CT 06804] [South Salem Owners, LLC, 73-44 177th St., Fresh Meadows, N.Y., owner of record] for a variance of Article VII, Sections 220-55E(5) to allow improvements to parking lots without planting shade trees in or adjacent to parking areas where one shade tree is required for every 10 required parking spaces [6 trees required but not provided].**

**The property is located on the northerly side of (#1410) NYS Route 35 and designated on the Tax Maps of the Town of Lewisboro as Sheet 39, Block 10549, Lot 17, in an R-4A, Four Acre Residential District consisting of approximately 24.23 acres.**

The Planning Board had approved the site plan prior to this meeting, the variance requested is no longer required.

**CAL. NO. 22-16-SP**

**Application of Michael Carelli, [Michael & Dina Carelli, owners of record], 41 Lockwood Road, South Salem, N.Y. 10590, for a Special Permit pursuant to Article V, § 220-32B (2) (c) and § 220-40 of the Zoning Ordinance in the matter of an existing approved accessory apartment. This application is occasioned by a change of ownership.**

**The property is located on the east side of (#41) Lockwood Road, designated on the Tax Map as Sheet 48, Block 10057, Lots 81, in an R-2A, Two-Acre Residential District.**

The Chairman advised that the Town Board’s recently adopted modifications to the regulations regarding accessory apartments removed the requirement that a special use permit is required by the Zoning Board of Appeals.

# CAL. NO. 23-16-BZ/SP

**Application of Michael F. Sirignano, Esq., 892 Route 35, Cross River, NY 10518 [Owner of record: The McCaffrey Family Partnership, P. O. Box 232, Waccabuc, New York 10597] for a variance of [1] Article IV, §220-23D(11) of the Zoning Ordinance in the matter of the proposed construction of an accessory building that exceeds 600 square feet (proposed 3812 square feet) in an R-2A, Two-Acre Residential District; [2] a Special Permit pursuant to Article V, § 220-40 of the Zoning Ordinance in the matter of a proposed accessory apartment in the proposed accessory building.**

**The property is located on the north side of (#22) Perch Bay Road, designated on the Tax Map as Sheet 25A, Block 10813, Lot 2, in an R-2A, Two-Acre Residential District consisting of approximately 3.722 acres.**

Michael Sirignano, Esq. and Patrick Croke, RA were present representing the applicant.

There were no objections to the notice of public hearing as published.

The Chairman advised that since noticing this public hearing the Town’s regulations regarding accessory apartments had been changed. This Board would not be hearing section two of this notice regarding the accessory apartment.

Mr. Sirignano noted that the McCaffrey family resides on this oversize lot [3.6228 acres] on Perch Bay Road located within the Residential Two Acre zoning district. To the west of the property is the Waccabuc Country Club beach facility and noted that there is a lot of wooded area between the beach front area and the property line. The Gullen residence is located to the east. The rear of the property abuts Lake Waccabuc.

Mr. Sirignano advised that Mr. McCaffrey is totally disabled and requires around the clock care. The couple who care for him currently reside in the main residence with their two children. Mr. Sirignano described this arrangement as not an ideal situation and the reasoning for the proposed accessory apartment. He reviewed the plan for the proposed 3800+ SF two-story building originally submitted. While acknowledging that it was a large structure, they would not come anywhere near the maximum building coverage for the lot. After hearing the Board’s concerns regarding the size during the site visit, Mr. Sirignano stated that they were prepared to reduce the square footage to under 1500 SF.

Mr. Croke displayed and reviewed the revised plan for a single story two bedroom 1497 SF building. He noted that the applicant had also proposed a home office with a separate entrance completely separate from the apartment.

Mrs. Mandelker noted that during the site visit that Mr. Sirignano stated that this was being built for Mr. McCaffrey’s use in the winter.

Mr. Sirignano advised that he was incorrect. He clarified that this apartment was for the two caregivers and their children.

In response to a question of Mrs. Mandelker, Mr. Croke advised that footprint of the main residence is 3262 SF. Given that it is a two-story residence it is probably in the 4500 SF range.

Mr. Sirignano advised that Mr. & Mrs. McCaffrey reside in the house. Their adult children come and go. He reviewed the goals of the accessory apartment found in the code. It was his belief that this application met the objective of the goals to provide affordable housing units to meet the needs of the elderly, relatives or domestic employees of the owners of the principal residence. The ordinance also allows a part of new construction to be utilized for an accessory apartment. He advised that he had reviewed the revised plans with the Building Inspector who advised that it is a permitted accessory building with the exception in that it is over the permitted 600 SF. The inclusion of the separate home office with its own entrance satisfied the building inspector that the proposed building is a permitted accessory building provided a variance is granted.

Mrs. Mandelker questioned whether an addition to the main house had been considered.

Mr. Croke advised that there were setback issues with the whole right of the house and approximately one-half of the house is located within the 150 foot wetland buffer. He noted the areas of ledge and the well location.

In response to a question of Mrs. Mandelker, Mr. Croke advised that the home office is approximately 160 SF and would be utilized by Carla McCaffrey a renowned attorney. Now that her husband is totally disabled she is trying to spend more time working from home.

Chairman Price inquired as to the size of the beach house and Mr. Croke advised that it 320 SF.

Mr. Sirignano advised that this is a balancing test between the needs of the applicant and the detriment to the character of the neighbor and submitted that there would be no detriment to the character neighborhood. To the west is the Waccabuc Country Club property which is heavily wooded. To the east is the Gullen property; their view is blocked by the McCaffrey residence. He displayed an aerial photograph and noted the nearby residences.

Mr. Croke noted that there is a rise in the terrain between the street and the proposed building. Most of the building will be blocked from the street as well.

Mr. Sirignano believed that the benefit sought by the McCaffrey’s cannot be achieved by some other method other than an area variance. Not granting the variance would deprive Mr. McCaffrey the ability to remain in his home in a manner which he deserved. He further believed that there would not be any physical or environmental impacts; the activity is located outside of the regulated wetland areas.

Mr. Croke reviewed the proposed parking areas. The driveway will remain gravel.

Mrs. Mandelker in looking for a practical alternative advised that she has seen smaller main residences accommodate an accessory apartment and questioned why an apartment could not be constructed on the ground level.

Mr. Croke stated that the bedrooms that are there now are utilized by their children and grandchildren during the summer months.

Mr. Sirignano advised that using the garage space for an apartment would prevent the homeowner from being able to garage their vehicles. He believed that there was no other workable alternative. There is no impact to any of the neighboring properties and they have reduced the originally proposed plan by 40 percent. The accessory apartment regulations permitted two bedrooms and he advised that the bedrooms have been downsized.

For the record, Mr. Sirignano amended the application to plan totaling 1497 SF.

Mrs. Mandelker noted that if they omitted the office, the building would be further reduced by 160 SF.

Mr. Sirignano reminded the Board that the Building Inspector was of the opinion that you could not build a new building exclusively for an accessory apartment. There had to be another permitted accessory building use. In response to Mrs. Mandelker’s concern that a subsequent owner may eliminate the office, Mr. Sirignano advised that the law states that this Board must balance the current owner’s needs and not what may happen in the future.

Mr. Rendo did not agree with the Building Inspector’s interpretation. Mr. Sirignano believed that if the Board agreed with Mr. Rendo, that he did not believe that the Building Inspector would challenge the Board’s determination and the applicant would remove the home office. He noted that he could not eliminate the home office without a determination from this Board that the accessory apartment could stand alone. Mr. Sirignano referred to and read Section 220-40B (1) “An accessory apartment may be located in the principal dwelling building or in a permitted accessory building, such as a barn or garage, and may include existing, new or expanded structure construction.” He stated that he read such as a “barn or garage” as an illustration, not limiting accessory buildings to just those two types of structures.

Chairman Price expressed concerns with having two residences on one lot. In response to Mr. Sirignano’s belief that 1500 SF is well below the size of most principal residences being constructed today, Chairman Price noted that the proposed building is still twice the size of what the code limits for an accessory apartment.

Mr. Sirignano noted that the code may limit the size of an accessory building, but it did not limit the size of an accessory apartment when it was not located within the principal residence so long as it did not exceed two bedrooms.

Chairman Price did not believe that it was the intent of the law to build a home office to have this large accessory building.

Mr. Sirignano agreed stating that he did not believe that they should have to build the office at all. He believed that in reading the ordinance that they did not need the office. Eliminating the office would reduce the size of the building further. It would be permissible to grant the variance being sought.

Mr. Rendo and Mrs. Mandelker agreed that the office was not necessary.

Chairman Price believed that there was a practical alternative to add the apartment to the principal residence. Given that the beach house was approved practically in the lake, he did not believe that the wetland concerns would hold a lot of water.

Mr. Sirignano did not believe that there was a viable option to add on to the house. Expanding the house to the east would have a greater impact on the Gullen residence and would be more visible from Perch Bay Road.

Mr. Croke expressed concerns with handicap access for Mr. McCaffrey noting that there is a lower level wheel chair access. Going up would create a third story.

Chairman Price expressed concerns with the Board setting a precedent by creating two houses on one lot.

Mrs. Mandelker stated she would not have an issue if the office were removed and the building appeared like an accessory apartment in size. Her issue is that there is already the beach house, and the main residence; it would be crowded with three buildings.

Mr. Sirignano noted that this is an oversize lot, they are not even near the permitted building coverage. The cabana is distant from this part of the property and is not even visible most times of the year from the residence. This new building would not even be seen on the lake. They have done everything to downsize this building and still meet the needs of the caregiver and their children. He did not believe that there would be a detriment to the neighborhood. He did not believe that the Zoning Board sets a precedent unless there were the exact same application and property. Every application prevails or falls on its particular impacts and merit.

Mr. Croke advised that the building coverage with this structure is 3.15 percent.

John Assumma, General Manager of the Waccabuc Country Club advised that the executive committee asked him to attend just to determine what was going on and questioned the height.

Mr. Croke advised that at the highest point would be 13 feet. He reviewed the aerial view with Mr. Assumma.

In response to a question of Mr. Rendo, Mr. Sirignano advised that the property owners would agree to register this apartment as an affordable unit.

Chairman Price suggested holding this matter over for a month noting that Mr. Krellenstein would be abstaining and it did not appear that Mr. Sirignano would be getting three votes. He further advised that he would like to speak with the Building Inspector and Town Counsel.

Mr. Sirignano agreed to hold the matter over until the October 26th meeting.

**Cal. #24-16-BZ**

**Application of Diane Banyai, 68 Hemlock Road, South Salem, NY 10590 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of an application to construct a carport that is located closer to the side property line than permitted (5’ 2” proposed where 15’ is required), closer to the front property line than permitted (11’ proposed where 30’ is required) and closer to the street center line than permitted (32’ 2” proposed where 55’ is required) in an R-1/2A, Residential District.**

**The property is located on the westerly side of (#68) Hemlock Road, designated on the Tax Maps of the Town of Lewisboro as Sheet 42E, Block 10284, Lots 4, 5 & 7, in an R-1/2A, in the One-Half Acre Residential District consisting of approximately 0.23 acres.**

Diane Banyai was present with Colin Calhoun.

There were no objections to the notice of public hearing as published.

Mr. Calhoun reviewed the plans to construct a carport to protect the applicant’s vehicle from an Oak tree and weather. He advised that this is a simple post and beam structure with a metal roof and no electricity.

Chairman Price advised that three of the members walked the site on Saturday. He acknowledged and read into the record an e-mail dated September 24, 2016 from the neighboring property owner Boku Prince in favor of the application. He further noted that the carport is proposed to be constructed on an existing driveway area in the Lake Kitchawan neighborhood that consists of a lot of non-conforming structures.

Mr. Calhoun advised that they had reviewed the plans with the neighboring property owners who are fine with them.

There was no public comment.

Mr. Krellenstein moved to approve the application as presented for the following reasons:

* There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
* There is no practical alternative to the variance requested due to the size of the lot where the house was built years ago.
* The requested variance is not substantial.
* There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.
* The Board found that this was not self-created due to the fact that the lot was undersized.

The motion was seconded by Mrs. Mandelker; To Approve: Mr. Krellenstein, Mr. Rendo, Chairman Price, Mrs. Mandelker. To Deny: None. Absent: Mr. Casper.

**CAL. NO. 25-16-BZ**

**Application of Anthony Martini, 152 Elmwood Road, South Salem, NY [owners of record: Anthony & Mari Martini] for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of a proposed in-ground pool that is closer to the rear lot line than permitted (23’ proposed where 50’ is required) in an SCR-2A, Special Character Two-Acre Residential District.**

**The property is located on the west side of (#152) Elmwood Road, South Salem, New York and designated on the Tax Map as Sheet 47, Block 10056, Lot 44, in an SCR-2A, Special Character Two-Acre Residential District consisting of approximately 7.8074 acres**

The applicant was not present.

There were no objections to the notice of public hearing as published.

Chairman Price advised that the Board members visited the property on Saturday and noted that although a large lot most of the land in the rear is inaccessible because of the terrain and stream. The pool is being proposed right behind the driveway perpendicular to the road, but would not be seen by the road. He stated that there was no other place to build it.

Mr. Krellenstein stated that the application made sense after seeing the property. The property is well kept and no one will see the pool.

Mr. Krellenstein moved to approve the application as presented for the following reasons:

* There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
* There is no practical alternative to the variance requested due to constraints of the lot.
* The requested variance is not substantial.
* There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.
* The Board found that this was not self-created due to the terrain.

The motion was seconded by Mrs. Mandelker; To Approve: Mr. Krellenstein, Mr. Rendo, Chairman Price, Mrs. Mandelker. To Deny: None. Absent: Mr. Casper.

# CAL. NO. 26-16-BZ

Application of Brian Bruce, 60 Brooklyn Avenue, Merrick, NY 11566 [Owners of record: New York American Water (NYAW)] for a variance of Article III, Section 220-12E (1) of the Zoning Ordinance in the matter of the proposed 7 foot high security fence around the newly constructed drinking water infrastructure where 4 feet is allowed in the required side yard setback.

**The property is located on the southeast side of Fairmount Road, Goldens Bridge, New York, designated on the Tax Map as Sheet 7H, Block 11139, Lot 23 consisting of 1.107 acres in the RMF, Residential Multi-Family District.**

Richard Ruge was present representing the applicant.

Mr. Ruge displayed the site plan and advised that the applicant is seeking to construct a seven foot high black chain link fence around the newly constructed water tank. The old tank will be demolished once they have permission to put the new tank in service.

Barbara Cera representing her daughter Erica Kasel who lives on 42 Fairmount Road advised that she could see the tank from the property and questioned why seven feet was needed as opposed to four.

Mr. Ruge advised that there had not been any fencing around the old tank. After 9/11 they were under a directive to secure all of their properties. The higher the fence, the more difficult it is to get over the fence therefore providing more security.

Mr. Krellenstein noted that as part of the application for the new tank he hiked up to the site and noted that there was a lot of graffiti on the old tank. He indicated that he was inclined to approve the application. A seven foot fence sends the message to stay out.

Mr. Ruge noted that the fencing would be over 200 feet from her daughter’s property line. He further indicated that Homeland Security may require barbed wire as well.

Mr. Krellenstein stated that he did not wish to cause her daughter any consternation or upset her but that he was inclined to say that a water tank is serious and whatever can be done to secure it, the Board should approve it.

Mr. Ruge advised that they could not plant anything inside or outside of the fencing to allow first responders full view of the tank. He noted that the black mesh cannot be seen from a distance.

In response to Mrs. Cera’s concern with the condition of her daughter’s driveway because of the construction, Mr. Ruge encouraged her to reach out to him. It may well be that they would have to repair or replace it once the old tank is removed.

Mr. Krellenstein moved to approve the application as presented for the following reasons:

* There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
* There is no practical alternative to the variance requested.
* The requested variance is not substantial.
* There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.
* The Board found that the variance may be self-created, but the new water tank is a necessary improvement and must be secured.

The motion was seconded by Mr. Rendo; To Approve: Mr. Krellenstein, Mr. Rendo, Chairman Price, Mrs. Mandelker. To Deny: None. Absent: Mr. Casper.

**IV. CORRESPONDENCE & GENERAL BUSINESS**

Mr. Krellenstein moved to adjourn the meeting at 8:25 P.M. The motion was seconded by Mr. Rendo; In Favor: Mr. Krellenstein, Chairman Price, and Mrs. Mandelker.

Respectfully submitted,

Aimee M. Hodges

Secretary, Zoning Board of Appeals