

MINUTES OF THE YORKTOWN ZONING BOARD OF APPEALS
JUNE 22ND, 2023

The regular monthly meeting was held for the Zoning Board of Appeals, Town of Yorktown, at the Yorktown Town Hall, 363 Underhill Avenue, Yorktown Heights, New York, June 22nd, 2023. The meeting began at 6:30 p.m.

The following members of the board were present:

William Gregory
Robert Fahey
Gordon Fine
John Meisterich
Anthony Tripodi

Also present are Adam Rodriguez, Special Counsel, Steven Fraietta, Assistant Building Inspector, and Nisreen Khouri.

The meeting was aired on Channel 20 Cablevision and Channel 33 Verizon Fios.

It was announced that the next public hearing would be held July 27th, 2023, site visits are scheduled for July 22nd, 2023. Mailings are to be sent from July 3rd to July 12th, 2023.

NEW BUSINESS

BOGA **#21/23** This is an application for a renewal of a special use permit for an accessory apartment

Property Address:

3747 Briarhill St.

Section 15.08, Block 2 Lot 3

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

ABRAMS **#22/23** This is an application for a renewal of a special use permit for an accessory apartment

Property Address:

3461 Sagamore Ave.

Section 15.16, Block 2 Lot 12

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

DUENAS **#23/23** This is an application to construct a new front portico that requires a front yard setback of 36.44 ft where 40 ft is required as per 300-21 and Appendix A of the Town Zoning Code. This property is in a R1-20 zone. A building permit and a Certificate of Occupancy will be required.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on July 27th, 2023, Site Visit on July 22nd, 2023, and referred to the Building Department.

HOFFMAN **#24/23** This is an application for a renewal of a special use permit for an

Property Address:

3808 Old Crompton Rd. accessory apartment.

Section 38.08, Block 1 Lot 32

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, this item was scheduled for a Public Hearing on July 27th, 2023, Site Visit on July 22nd, 2023, and referred to the Building Department.

CONTINUED PUBLIC HEARINGS

FALCONE #17/23 This is an application to reconstruct an existing multi family dwelling that has been approved by a variance dated July 29, 1976 for 3 dwelling units, where the applicant is requesting 4 dwelling units. This application will require a front yard variance of 22 ft where 40 ft is required, as per section 300-21 and Appendix A of the Town Zoning Code.

Richard Falcone appeared before the Board.

Mr. Falcone said I would like to withdraw the request for four (4) apartments, we are going to leave it as three (3). I have a question, it is about the front porch on the house, and part of that request was a variance for that, since we are remodeling the house I would like to use that front porch as an enclosed part of the house. Do I still need a variance since it is an existing part of the structure, just need clarification?

The Board and Mr. Falcone discussed the matter of the enclosed porch and what needs to be done and submitted.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, this item was adjourned.

CARVALHO #44/20 This is an application to subdivide a lot creating 2 lots under the required 10,000s.f. where a minimum of 20,000 s.f. is required. This property is located in a R1-10 zone.

Section 48.07, Block 2, Lot 9

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, this item is adjourned to the September meeting as requested.

GRACE #45/20 This is an application to allow a caretaker's cottage as per 300-47 of the Town Code. This property is in a R1-80 zone.

**Property Address:
959 Hanover St.**

Section 59.07, Block 1, Lot 4

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, this item is adjourned to the September meeting as requested.

ELEZAJ #39/22 This is an application to legalize three (3) accessory apartments in a single-family home with an existing non-conforming cottage making the total of four (4) dwelling units in a single-family district.

Section 25.12, Block 2, Lot 32

John Buckley, Attorney, representing the applicant.

Mr. Buckley said in preparation for tonight's' appearance I looked at the January 6 video of the Board presentation, and Board member Gregory made a comment that I think really should guide us as we move forward on this. The question should not be so much as whether it should be a three (3) or four (4) family use, but whether it qualifies as multi-family use without getting into the number of units. The discussion back in January and previous to that with David Steinmetz in the fall was

whether a pre-existing non-conforming use existed. Our difficulty has been, despite diligent efforts, there is no records available in the Building Department that can confirm whether there was a non-conforming use. The title report shows easements, utility easements dating back to 1928. The title report shows deeds suggesting that there were premises on the property dating back to the 30's. Chairman Fine said the deed would be for the property itself not how many units are on the property. Mr. Buckley said I believe it refers to structures on the deed.

Chairman Fine said right, but it says structures it does not specify what the structures are, it could be a house, and or a garage.

Mr. Buckley said you are right, my issue here is we are attempting to prove a negative. There are no records available from the Town of Yorktown, from the Building Department as to when the property was built. Was it built before the establishment of the building code? When did this all take place, the only record that we can find is the tax assessment record which shows a couple of things.

Mr. Buckley provided copies of the assessment record to the Board. He said you will note that the property was originally categorize as 210, it was changed at some point to 281, multiple residences on one parcel. Now does this make the property legal, obviously not, you can have a property assessed that is illegal in nature, but is lends credence to the thought that this was a long existing use.

Mr. Fahey asked when was that assessment done, what year was that. When they put that note on that form, what is the earliest information that we have on this form.

Mr. Meisterich said 1962.

Mr. Fahey said it could have been done almost at any time but in 1962 is essentially when they establish this property as having all these structures.

Mr. Buckley said that could have been an existing condition, it is the first time that it is noted on the tax assessment record. If you look at the comment section, it says apartment rented out in the main house, cottage rented out. That is not conclusive, all I am trying to highlight here is that there is a dirth of proof and we have been placed in the position where we have searched for records, we cannot find them. Board member Fahey at the last meeting you suggested that we go to the Health Department, which we did. It came back in the title search that there were no violations of record. We then filed a foil request, I have been hoping that the foil request would be answered by now, they promised by June 8, here we are June 22 still nothing.

Chairman Fine said unfortunately as you know when a report comes back no violations of record that does not mean there are not any, it just mean there were none posted.

Mr. Buckley said I agree, you are absolutely right but I am trying to prove a negative. What I can say to you is there are no Building Department records, there are three (3) curb cuts indicating that at some point the Town had to be involved to authorize it.

Chairman Fine said not necessarily. If the Town was involved there would have been a permit from the Highway Department, you would think.

Mr. Buckley said you would think, where I can tell you permits were issued, there were five (5) electric meters in 2021 that were approve by the Town Building Department that suggest that it was a pre-existing condition, the Town was aware of it.

Chairman Fine said or they just request a permit, five (5) permits, not that it was pre-existing
Mr. Buckley said but you would think it would trigger the question.

Chairman Fine said during the first meeting we went through that trying to figure out how the permits were even issued, and there was no clear answer to that.

Mr. Buckley said I understand, I am highlighting that, so that you can recognize the difficulties that we are faced with. This property owner is interested in bringing up the quality of the property, he is anxious to connect the main structure at least to the sewer line, which is literally at the border of this property, but we need some way to reset the discussion with the Board so that we can make a more effective use of this property.

Chairman Fine said you can use the property for what it was designed to be used for, which is a residence.

Mr. Buckley said the question is how many units in the residence.

Chairman Fine said whatever is permitted by zoning.

Mr. Buckley said for example, there is a cottage on this site, could it be characterize as a caretaker apartment. When you look at the code it calls for a minimum of 2 acres, this is on 1.3 acres, but it is all going toward how do we make an effective use of this property, and as I say given the dirth of documentation we need a little guidance.

Chairman Fine said what I am saying as far as the term of effective use of the property, the property has an effective use as per the zoning code, you can use it for what the zoning code says, our decision here if we deny the applications does not make the property useless, it has the use it is allowed to have. We are not saying you cannot have any residence on it, we are just saying you cannot do what you want to do with it. What we had said originally was by asking for the number of units you want it is really a use variance, it is not even an area variance it is a use variance, you are changing the permitted use of the property.

Mr. Buckley said this is the crux of the question If this is a non-conforming pre-existing use, we are grandfathered in and our problem is we cannot establish that authoritatively, but again we should not be forced to.

Chairman Fine said but by you not being able to prove that does that does not make the responsibility fall on the Town to prove it for you or not prove it for you.

Mr. Buckley said one would think that a Town department has an obligation to maintain records.

Mr. Fahey said one could also imply that that work was done illegally, it has never been legal. So to assume at this point that because it has been standing there for 80 years somehow we should justify and make it legal. That is not the Town responsibility.

Mr. Buckley said it is not, but over the course of the 80 years it is pretty clear that the Town has been involved in looking at the property, issuing permits for the property. It begs the question if this was not a permitted use why did the Town allow these things to happen.

Chairman Fine said there are people using property illegally that the Town does not necessarily pick up on. It is not a matter of selective enforcement.

The Board and Mr. Buckley discussed the permits and the assessment card.

Chairman Fine said it more of procedural question, the property is owned by an LLC, is it not?

Mr. Buckley said yes.

Chairman Fine said Elezaj is the name of who.

Mr. Buckley said he is the managing member of the LLC.

Chairman Fine said so would the application not have to be in the name of the owner which is the LLC.

Mr. Buckley said one would think, yes.

Chairman Fine said whatever we decide should be in the correct name.

Mr. Buckley said yes, it should be Black Mountain Capital.

Chairman Fine asked do you want us to amend it for Black Mountain Capital.

Mr. Buckley said I do, and I would also ask that you reserve decision at least until we get that Health Department foil request answered.

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

ELEZAJ **#40/22** This is an application to allow two (2) primary structures on a lot where one (1) is permitted as per section 300-21C(1)(a)[1], to allow a combined floor area of 3 accessory apartments of 1835 square feet where 800 square feet accessory apartment is permitted as per section 300-38B(5), to allow usage of property that is not owner occupied as per section 300-38B(8), and to allow four (4) accessory apartments where one (1) is permitted in a R1-40 zone as per section 300-38B(9).

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

O'DONNELL #51/22 This is an application to allow a 6'6" fence located in the front yard where 4'5" is permitted as per section 300-13F and Appendix A of the Town Zoning Code.
Property Address:
1405 Turus Ln.
Section 16.17, Block 1, Lot 48

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, this item is adjourned to the September meeting as requested.

NEW PUBLIC HEARING

GUZMAN #14/23 This is an application for a renewal and enlargement of an accessory apartment in a single-family home that requires a special permit as per 300-38 of the Towns Zoning Code and a variance for the proposed apartment to be 893 sq. ft where 800 sq. ft is required per 300-38B (5) of the Town Zoning Code.
Property Address:
395 Hallocks Mill Rd
Section 37.10, Block 1 Lot 36

Mailings and sign certification in order.

Freddy Guzman appeared before the Board.

Chairman Fine said, the apartment already exists, correct.

Mr. Guzman said yes.

Chairman Fine asked why are you enlarging it?

Mr. Guzman said because my daughter has gotten married and it really need to be little bit bigger, so that is why we are trying to use a little bigger apartment.

Chairman Fine asked was the apartment always in the basement?

Mr. Guzman said yes, it is.

Chairman Fine said so how are you enlarging it in the basement, are you bring a piece of it upstairs, or keeping it in the basement and adding a room, what are you doing.

Mr. Guzman said we are going to try and close the garage and add another room.

Memo from the Assistant Building Inspector, dated June 21, 2023 states:

I inspected this property on June 21, 2023 and found no violations. I have no objections to granting the variances and the special permit. This application will require a building permit and a Certificate of Occupancy.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, the application for a renewal of a special use permit was granted for a period of three (3) years, and a variance granted for enlargement of an accessory apartment in a single-family home that requires a special permit as per 300-38 of the Towns Zoning Code and a variance for the proposed apartment to be 893 sq. ft where 800 sq. ft is required per 300-38B (5) of the Town Zoning Code.

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

Gerard Squeglia representing his daughter, the applicant.

Memo from the Assistant Building Inspector, dated June 21, 2023 states:
I inspected this property on June 21, 2023 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 Gregory, Fahey, Fine, Meisterich, and Tripodi, the application for renewal of a special use permit was granted for a period of three (3) years.

HENSON #19/23 This is an application for a two-story addition that will require variances for a rear yard setback of 12.81 sq ft where 30 ft is required and is on a non-conforming lot of 8864 sq ft where 20,000 sq ft is required as per section 300-21 and Appendix A of the Town Zoning Code.

Mailings and sign certification in order.

Gerard Moore of Third Floor Corporation, representing the applicant.

Mr. Moore said we pretty much want to expand the kitchen and expand the house over the garage, which would add two (2) bedrooms and one (1) bathroom, and make the kitchen bigger and modern. Chairman Fine asked, the addition is not going over the carport, is it?

Mr. Moore said the addition is not going over the carport, it is going over the existing garage, the carport is next to that.

Chairman Fine said the reason I asked is because there is a letter here from a neighbor, which is submitted to the file, just questioning whether or not the addition was going to be extending into the carport, because back when that variance was granted, there was a concern about how close to the property line it was, they were concerned that the addition was going to be as close.

Mr. Moore said the addition is not going over the carport just the garage.

Memo from the Assistant Building Inspector, dated June 21, 2023 states:

A previous variance for #101/00 for a side yard was granted. I inspected this property on June 21, 2023 and found no apparent violations. have no objections to granting relief. This application will require a building permit and a certificate of occupancy.

Chairman Fine asked if there were any comments from anyone.

Doris and Frank Petty, neighbors, came to the podium.

Mrs. Frank said the only concern we had was the building was going to come into the carport because back in 2000 we actually came before the Zoning Board when that variance went into effect, and the understanding was that was always going to be an open structure without walls, but it is, so we are great.

The Board discussed the application and applied the statutory factors.

Upon motion by Fine, seconded by Fahey and unanimously voted in favor by Gregory, Fahey, Fine, Meisterich, and Tripodi, the application for a variance was granted for a two-story addition that will require variances for a rear yard setback of 12.81 sq ft where 30 ft is required and is on a non-conforming lot of 8864 sq ft where 20,000 sq ft is required as per section 300-21 and Appendix A of the Town Zoning Code, with the stipulation it pertains only to the requested variance and not the remainder of the property line and the addition be built in substantial conformity to the plans submitted.

ALEXANDRE #20/23 This is an application to allow a chicken coop in a front yard (yard was determined by a previous variance #80/93) that will require a variance of 30 sq ft where 40 ft is required and a lot size of 20,226 sq ft where 40,000 sq. ft is required as per section 300-21 and Appendix A of the Town Zoning Code.

Mailings and sign certification in order.

Chairman Fine said you want to do a chicken coop.

Mrs. Alexandre said yes.

Chairman Fine said I understand the coop is going to be located by 202, on that side of the property.

Mrs. Alexandre said correct.

Memo from the Assistant Building Inspector, dated June 21, 2023 states:

I inspected this property on June 21, 2023, no objections to granting the variances and a special permit for a chicken coop. I did find the porch over the front door that is in need of repairs and will require a building permit.

Chairman Fine asked if the Building Inspector spoke to them about the repairs and permit.

Mrs. Alexandre said no.

The Assistant Building Inspector, Mr. Fraietta explained what needs to be done.

Mrs. Alexandre said we will take care of that.

Chairman Fine said two things I would point out. When you request a permit for a chicken coop, you have to supply the Board with basically a plan of what the chicken coop is going to look like, the actual plan of the coop not the drawing on a survey, as well as a plan for the storage of the waste and for the storage of the food. I do not currently see that in the file.

Mrs. Alexandre said we were not informed of that requirement.

Chairman Fine said you need to submit those so we can consider everything in determining the application.

Mrs. Alexandre said we will send it in.

Mr. Meisterich said we might also consider screening, it is not always required but since you are fronting Route 202. As part of what you submit to us, it is probably a good idea to show how that could be viewed or screened from Route 202.

Chairman Fine said also there may be a concern that chickens do have a habit sometimes of getting loose, and we do not want them running on to 202, so what are you going to do to prevent that.

Mr. Alexandre said I was going to put up a link fence.

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

Meeting adjourned at 7:10pm

Happy Zoning!