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ZONING BOARD OF APPEALS

TOWN HOUSE  
ANNEX  
337 ROUTE 202  
SOMERS, NY 10589

*Town of Somers*

WESTCHESTER COUNTY, N.Y.



**Meeting Minutes**  
December 18, 2018

The members present were: Chairman Cannistra, Ms. D'Ippolito, Mr. Guyot, Mr. Harden, Mr. Newman and Mr. Santaroni.

Mr. Carpaneto was absent.

Building Inspector Tom Tooma and interested residents were also present.

Chairman Cannistra opened the meeting at 7:30 p.m. with the Pledge of Allegiance.

**APPLICANTS**

Chairman Cannistra announced that the application for Carol Miller, item number 1 on the agenda has been permanently adjourned at the request of the applicant. In addition, the application for Janet Lupinacci, item number 5 on the agenda has been adjourned to the January meeting at the request of the applicant.

**URSTADT BIDDLE PROPERTIES, INC. – BZ25/18 – 17.15-1-13**

An application for an Area Variance for more than the number of pole signs allowed, located in a Neighborhood Shopping District at 325 Route 100, Somers. The property is shown on the Town Tax Map as Section: 17.15, Block: 1, Lot: 13. RE: Section Schedule 170-126.

Andy Albrecht, Vice President, as well as Director of Management and Construction for Urstadt Biddle Properties, Inc. addressed the Board. Four signs are being proposed. A wall sign for the building and three free standing pole signs. As per the original site plan for this building, only the new wall sign is permitted. All of the existing tenant signage will be removed, including the two existing directory wall signs. The "Town Center Professional Building" sign over the 1<sup>st</sup> floor main entrance will remain. All three pole signs will have the names of the six tenants in black letters with the same font on white

Lexan panels. The frame of each is black and all three will be internally lit. With regard to illumination, at night the white letters appear black and the black letters appear white giving it a very subtle appearance. On top of each, is a silhouette of three elephants. The sign proposed for the back of the building will have directional arrows for the 1<sup>st</sup> and 2<sup>nd</sup> floors.

At the request of the Chairman at the last meeting, he was asked to provide the following: a site plan with the exact location of each sign noted; building elevations; pictures of what the signs would look like lit at night; and a photo of the proposed wall sign, which he did.

Chairman Cannistra announced that all members have visited the site since the last meeting.

Although everyone appreciated the additional information provided, there was still some concern over the size of the sign to be placed on the Route 202 side of the building, as well as the number of signs being proposed. Mr. Albrecht stressed the need for the tenants to have visibility. Some felt that only the building needs to be identified, not necessarily the tenants.

President of Urstadt Biddle Properties, Inc. Willing Biddle addressed the Board and re-emphasized that since this is not an office building and it is similar to a retail business, shingles advertising the professionals in the building are important to the occupants. He also noted that the signs proposed are internal to the shopping center and similar to the signage they have in the Somers Commons.

Mr. Guyot asked that the foot care sign in one of the windows be taken down and reminded the applicant that all other signage on the building be removed.

Mr. Biddle said that if the number of signs is an issue, he would be willing to eliminate the directory sign from the proposal.

Phyllis Fable of 19 Annarock Drive addressed the Board. She supports the businesses in that building and thinks the larger sign at Route 202 is needed.

A resident of 13 Hyatt Lane addressed the Board. He goes to the podiatrist in that building and feels that the directory sign is important so that patients who have difficulty walking can get to where they need to go without an issue.

In an effort not to delay this application any further, Mr. Biddle is willing to reduce the size of the sign proposed for the Route 202 side of the building from 6' by 6' to 4' by 4'.

Mr. Guyot made a motion for a Type II action. Mr. Newman seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Mr. Guyot made a motion to approve the sign proposal as submitted with one exception, the sign proposed for Route 202 will be reduced in size from 6' by 6' to 4' by 4'. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Area Variance was approved.

**MASTRANTONI BROS., INC. – BZ29/18 – 5.19-2-55**

An application for an Area Variance for a 2.5' rear yard set-back for a new dwelling that replaced an existing one family dwelling that burned down, located in an R-10 Residential District at 12 Hickory Road, Mahopac. The property is shown on the Town Tax Map as Section: 5.19, Block: 2, Lot: 55. RE: Section Schedule 170:A1 of the Zoning Schedule.

Paul Mastrantoni addressed the Board. He bought the property after the 1 ½ story house burned down. The foundation had to be replaced and a new 2 story house was built in the exact location, at the recommendation of the former Building Inspector, of the previous house. A non-conformity was issued for the former house. Building Inspector Tooma thought now was the opportunity to make the new house conforming therefore a 2.5' rear yard Area Variance would be needed. The issuance of a Certificate of Occupancy is pending the outcome of this evening's request. All other aspects of the new house construction are in order.

Mr. Guyot made a motion for a Type II action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Mr. Guyot made a motion to grant the 2.5' rear yard set-back. Mr. Harden seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Area Variance was approved.

**GERARDO AND CONSIGLIA VILLANI – BZ30/18 – 37.11-1-3**

An application for an Area Variance to construct driveway entry gates, located in an R-120 Residential District at 2649 Route 35, Katonah. The property is shown on the Town Tax Map as Section: 37.11, Block: 1, Lot: 3. RE: Section Schedule 170-49.

Gerardo Villani addressed the Board. He would like to install an 8' high gate and stonewall that is 9' 6" high with lions on each of the pillars and 45' from the road. Mr. Villani owns 25 acres of property and the closest driveway is 800 to 1,000' away. An Area Variance is being request to have privacy and security. The gate will have a direct connect to the Fire Department and its own electric meter.

Mr. Santaroni made a motion for a Type II action. Mr. Guyot seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye

Mr. Santaroni                      Aye  
Chairman Cannistra              Aye

Mr. Harden made a motion to grant the Area Variance as per the plans submitted. Mr. Guyot seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito                      Aye  
Mr. Guyot                              Aye  
Mr. Harden                            Aye  
Mr. Newman                          Aye  
Mr. Santaroni                        Aye  
Chairman Cannistra                Aye

The Area Variance was approved.

**HERITAGE HILLS SEWAGE WORKS – BZ32/18 – 17.10-10-18.1**

An application for an Area Variance to install a 1,000-gallon capacity liquid propane tank below grade, located in a DRD Zoning District at 9 Heritage Hills Drive, Somers. The property is shown on the Town Tax Map as Section: 17.10, Block: 10, Lot: 18.1. RE: Section Schedule 170-32.7H.

Rosco Booker of Cedarwood Engineering Service addressed the Board. He is requesting an Area Variance to bury a 1,000-gallon propane tank for six heaters at the existing wastewater treatment plant. The tank is made of steel, painted with an epoxy type paint and will be anchored below the ground with concrete, sand, as well as gravel. It will be visually inspected and pressure tested each time it is filled, about once a month. If there is a leak it just dissipates up into the air. Underground tanks are safer than those that are above ground.

Mr. Santaroni made a motion for a Type II action. Ms. D'Ippolito seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito                      Aye  
Mr. Guyot                              Aye  
Mr. Harden                            Aye  
Mr. Newman                          Aye  
Mr. Santaroni                        Aye  
Chairman Cannistra                Aye

Mr. Guyot made a motion to grant the Area Variance as per the plans submitted. Mr. Harden seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Area Variance was approved.

**KAELA CHOQUETTE AND DAVID POTTER – BZ24/18 – 28.06-1-5 (CARRYOVER)**

An application for a Special Exception Use Permit to construct an accessory apartment on the 2<sup>nd</sup> floor of a barn, as well as an Area Variance because the barn is being constructed after April 1, 1992, located in an R-80 Residential District at 6 Annarock Drive, Somers. The property is shown on the Town Tax Map as Section: 28.06, Block: 1, Lot: 5. RE: Section Schedule 170-70.

**KAELA CHOQUETTE AND DAVID POTTER – BZ33/18 – 28.06-1-5**

An application for an Area Variance without the need for a ruling from an administrative officer pursuant to Town Law 274-b, from Town Code Section 170-69 (B)(2) which prohibits the housing of domestic animals in a building used for human habitation, located in an R-80 Residential District at 6 Annarock Drive, Somers. The property is shown on the Town Tax Map as Section: 28.06, Block: 1, Lot: 5. RE: Section Schedule 170-69 and Town Law 274-b.

**KAELA CHOQUETTE AND DAVID POTTER – BZ34/18 – 28.06-1-5 and 4**

An application for a Special Exception Use Permit to keep up to six (6) horses on two properties, located in an R-80 Residential District at 6 and 8 Annarock Drive, Somers. The property is shown on the Town Tax Map as Section: 28.06, Block: 1, Lot: 5 and 4. RE: Section Schedule 170-69.

Attorney Don Rossi addressed the Board. Two new applications were submitted on behalf of his clients Kaela Choquette and David Potter. One for an Area Variance without the need for a ruling from an administrative officer pursuant to Town Law 274-b, from Town Code Section 170-69 (B)(2) which prohibits the housing of domestic animals in a building used for human habitation, and the other, an application for a Special Exception Use Permit to keep up to six (6) horses on two properties – 6 and 8 Annarock Drive. Statements of Use for both applications were submitted. Once again, Mr. Rossi reminded the Zoning Board members that the applicants are more than willing to accept stipulations as they see necessary on any approvals. Examples of what some of those

conditions could be were listed. In using the word farm, Mr. Rossi reiterated that it will not be operated for business, but simply a farm for retired horses. The apartment will not pose a dangerous situation to the family member or horse caretaker that is living in it. The paddocks will only be used for the horses to get fresh air and exercise for short intervals throughout the day. They will get fed in their stalls and don't need the grass for grazing.

Town Attorney Gerry Reilly reminded the Board that if either of the lots were sold off, the approval would be null and void.

Attorney Michael Caruso representing Barlow and Patricia Humphreys as well as George Azar addressed the Board. Documents were provided to the members prior to the meeting, but he wanted to add that in his opinion, the two new Area Variance applications cannot be varied by the Zoning Board. They either need a Use Variance or amendment to the Code from the Town Board, as it has been previously expressed that the Code is outmoded. With regard to animals and humans cohabitating, the Board should apply it as it is written.

Dominic Veltri of 3 Annarock Drive addressed the Board. He submitted a letter to the members prior to the meeting expressing why he objects to all three applications. Mr. Veltri reviewed his concerns and issues. He submitted a petition against the applications to the Board Secretary.

Chairman Cannistra reminded the audience that anyone who wants to speak will be limited to three minutes.

George Azar of 265 Route 100 addressed the Board. The existing farms with horses in Somers have vast land, not steep slopes that 6 and 8 Annarock Drive have, and in his opinion, there are environmental issues and horses don't belong on the property. He is not happy that a new owner is moving in and transposing an existing neighborhood before they are even living there. Everything that is being proposed for the property is too compressed.

Jim Kearney of 12 Annarock Drive addressed the Board. His concern is that the horses can spread West Nile virus throughout the community since there is no vaccine against it for humans.

Ed and Donna O'Connell of 5 Annarock Drive addressed the Board. Mrs. O'Connell has been a realtor for 22 years and spoke about the real estate comparisons submitted to the Board by the realtor who sold the new owners the property. She vehemently refutes his findings. Having horses did not increase the value of the properties, but actually reduced the selling price at the time of the sale. In her opinion what was presented was very misleading and inaccurate. She also feels that Bibbo Associates didn't do their job correctly. Mrs. O'Connell asked that Board check their records as they have never approved an apartment over a barn. In his opinion, Mr. O'Connell feels as though the Board is for the applicant and if they would just follow the Code there

shouldn't be any problems. Photos of some of the real estate comps and how close their property is to the applicant were shared.

Steven Miller of 22 Annarock Drive addressed the Board. All three applications come down to tangibles and intangibles, and in his opinion, the intangibles haven't been dealt with. The Zoning Board has the authority to send these applications to the Planning Board. The Chairman reminded him that they are not Planning Board issues. Mr. Miller said no one is more authorized to define the character of the neighborhood than the people that live there.

Patricia Humphreys of 4 Annarock Drive addressed the Board. She read aloud her letter of November 20, 2018 of which a copy was submitted to the members prior to the meeting.

Attorney Don Rossi addressed the Board. Ms. Choquette is the intangible as she will be living on the property and is only proposing to have half the amount of horses she could be asking for. The applications are a Type II and there is no Use Variance. All of the objections are conjecture only. What is being proposed is consistent with the neighborhood. Tim Allen of Bibbo Associates should be commended for coming up with a project that follows the Code so precisely. The only reason there have been adjournments is because of the objectors which resulted in his client being forced to hire an attorney and engineer.

Ms. Choquette addressed the Board. Horses are vaccinated which stops the passage of disease. She will not be running a business, and the horses are her pets. They have diabetes therefore cannot live on grass which could literally kill them. This is now her home and she would not let it become a manure infested cesspool. Although the top of her property is beautiful and flat, no horses will be ridden on the property. Ms. Choquette does have a horse that she rides, but it will not be living at her new property. The manure will be contained and removed at least weekly. She is not trying to get around requirements by changing things. There is nothing deceiving going on. She is simply trying to address the concerns people living around her have. Before the property was purchased, several conversations took place between her and the former Building Inspector to be sure that she could have horses. She is agreeable to any and all stipulations the Board puts on any approvals granted.

Eric Rosenfeld addressed the Board. He is the realtor that sold Ms. Choquette and Mr. Potter the property. The information that he presented to the Board was not supposed to be a real estate comparison but to address whether or not the presence of horses diminishes the property value, not increase it.

Barlow Humphreys of 4 Annarock Drive addressed the Board. He submitted a letter to the Board prior to the meeting. He expressed his objections and concerns regarding the three applications.



Attorney Don Rossi addressed the Board. He reminded everyone that any approvals with stipulations must be strictly adhered to and if they are violated the Code Enforcement Officer will get involved.

Mr. Guyot made a motion to close the public hearing on the three Choquette/Potter applications. Mr. Harden seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The public hearing was closed.

Chairman Cannistra reiterated that the Board's responsibility is to seek reasonable relief from the Zoning Codes and if anyone is not satisfied with their decision, they are free to file an Article 78 with the Supreme Court.

The members of the Board were given an opportunity to share their thoughts on each of the applications. A discussion ensued.

Mr. Guyot made a motion for a Type II action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Ms. D'Ippolito made a motion to grant the Special Exception Use Permit to construct an accessory apartment on the 2<sup>nd</sup> floor of a barn with the understanding that only family or caretakers of the horses may live in it. The accessory apartment may not be rented out. In addition, an Area Variance because the barn is being constructed after April 1, 1992 was also granted. Mr. Guyot seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Nay
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Special Exception Use Permit and Area Variance were approved.

Special Exception Use Permits for accessory apartments must be renewed every 7 years and if the property is sold, it must be renewed within 6 months by the new owner.

Mr. Guyot made a motion for a Type II action. Ms. D'Ippolito seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Ms. D'Ippolito made a motion that the only domestic animals that may be housed in the barn are horses. Mr. Guyot seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Nay
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Area Variance was approved.

Mr. Guyot made a motion for a Type II action. Ms. D'Ippolito seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Mr. Harden made a motion to grant a Special Exception Use Permit to keep up to six (6) horses on the two properties under the following conditions:

1. All horses kept on the two properties shall be owned or leased by one or both of the Appellants.
2. There shall be no leasing of stalls.
3. There shall be no leasing of horses on an hourly, daily or other basis.
4. There shall be no private or group lessons offered to the public.
5. There shall be no outdoor illumination of paddocks and no outside loudspeaker systems.
6. The handling of manure, including its removal, shall comply with the Town of Somers Town Code and Westchester County Sanitary Code, and
7. All feed shall be stored in rodent proof containers. Mr. Guyot seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Nay
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Special Exception Use Permit was approved.

At 10:40 p.m. the meeting was temporarily adjourned for a break and reopened at 10:55 p.m.

**ANTHONY AND CATHERINE PORCO – BZ01/18 – 4.18-1-1 (CARRYOVER)**

An application for an interpretation under the Town Code of the Town of Somers pertaining to a nonconforming commercial use in a single family, residential district,

located in an R-80 Residential District at 1 Route 6, Yorktown Heights. The property is shown on the Town Tax Map as Section: 4.18, Block: 1, Lot: 1. RE: Section Schedule 170-112.

At the last meeting, a motion was made by Ms. D'Ippolito and seconded by Mr. Santaroni to close the public hearing for this application. All were in favor.

Chairman Cannistra reported that at his request, all of the Board members have visited the site and surrounding neighborhood since the last meeting. In addition, an Executive Session with the Town Attorney to discuss this application took place.

All Board members were given an opportunity to share their thoughts about the application. A discussion ensued. The City of White Plains v. Amodio's Garden Center and Flower Shop, Inc. case of February 26, 2009 was referenced.

Mr. Guyot made a motion for a Type II action. Ms. D'Ippolito seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Abstain
Chairman Cannistra	Aye

Mr. Guyot made a motion in agreeance with the former Building Inspector Efrem Citarella's letter of October 13, 2017 stating that he found no violations during his site visit conducted at Whispering Pine Landscape Supply on October 2, 2017. Mr. Newman seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Nay
Mr. Newman	Aye
Mr. Santaroni	Abstain
Chairman Cannistra	Aye

**OTHER BUSINESS:**

The minutes of the November 20, 2018 meeting will be approved at the meeting in January.

The next monthly meeting of the Zoning Board of Appeals will be held on January 15, 2019 at 7:30 p.m. There being no further business, the meeting was adjourned at 11:10 p.m.

Respectfully submitted,

Denise Schirmer, Secretary  
Zoning Board of Appeals

cc: Town Board  
Town Clerk  
Planning and Engineering  
Planning Board