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ZONING BOARD OF APPEALS

TOWN HOUSE
ANNEX
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Town of Somers

WESTCHESTER COUNTY, N.Y.



Meeting Minutes

July 16, 2019

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

Mr. Guyot 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

MARGARET GEMBECKI AND MADELEINE MINNUCCI – 2019:ZB22 – 26.07-1-5

An application for an Area Variance for less than the required lot size for a pre-existing non-conforming two-family dwelling for a 2-story addition in an R-40 Residential District at 15 Stonewall Drive, Granite Springs. The property is shown on the Town Tax Map as Section: 26.07, Block: 1, Lot: 5. RE: Section Schedule 170:A1 Zoning Schedule Part 1.

Chris Sciarra owner of CS Construction addressed the Board. The legal two-family house is owned by two sisters who have been using it as a weekend home. After the construction they will live there year-round. Plans for the project were shared and reviewed. The roof is being raised and the dormers removed. An addition consisting of a one car garage with a bedroom over it is being added. The existing bedroom will be used as a living room. The bedroom count will remain the same. A screened back porch will be added and the deck off the 1st floor will be removed. There is a separate access to each side of the house from the front porch. The addition will blend in with the existing stone work and stucco. All set backs will be met and there are no issues with the addition being too close to the septic or well heads.

Nancy Gerbino of 14 Raemont Road and a 56-year resident of the Town addressed the Board. She has no opposition to the application. Architecturally the addition will fit in quite nicely.

Mr. Harden made a motion for a Type II action. Mr. Carpaneto seconded the motion.

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

POLL OF THE BOARD

Mr. Carpaneto	Aye
Ms. D'Ippolito	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

Mr. Harden made a motion to grant an Area Variance for less than the required lot size for a pre-existing non-conforming two-family dwelling for a 2-story addition. Mr. Carpaneto seconded the motion.

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

POLL OF THE BOARD

Mr. Carpaneto	Aye
Ms. D'Ippolito	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

The Area Variance was approved.

LORI ENSINGER AND WILLIAM KUEBLER – 2019:ZB23 – 37.10-1-13.1

An application to appeal the Building Inspector's interpretation that the enclosed tennis courts are not an office or studio and, therefore, the use of the enclosed tennis courts on the property by a resident tennis professional teaching lessons and providing instruction and training to private students is not permitted by the Town's Zoning Ordinance. As a related matter, the applicant seeks to eliminate a condition in a 1973 Variance that states the enclosed tennis courts are private not commercial since the condition potentially conflicts with the home occupation use in an R-120 Residential District at **24 Orchard Hill Road, Katonah**. The property is shown on the Town Tax Map as **Section: 37.10, Block: 1, Lot: 13.1**. RE: Section Schedule 170-82(D).

Chairman Cannistra informed the audience that he asked Town Attorney Gerald Reilly to attend the meeting this evening with regard to this application.

Attorney Geraldine Tortorella addressed the Board. There is a 100' by 120' tennis building on the applicant's property that houses two full sized tennis courts. It was constructed in 1973 after being issued a variance for the height from the Zoning Board of Appeals. Two conditions were attached, the building could only be used for tennis that is private use not commercial. The applicant bought the property in 2005 and continued its historical use of private tennis instruction as well as third-party tennis practice and play. Currently the property is on the market and a tennis pro wants to buy it, continue the historical use as well as use it as his principal residence. Ms. Tortorella believes the use would qualify as a home occupation despite Building Inspector Tom Tooma stating in June that this use is not an office or studio by definition. She went on to say that the applicant is seeking a reversal of the determination of the Building Inspector as the tennis offered is selective and limited, as it is by invitation only. In addition, they would like an amendment to the 1973 conditions as they are creating ambiguity.

Lori Ensinger, owner of the property addressed the Board and explained the historical tennis use. After discussions with Town officials prior to purchasing the property, she was told that she could continue the use. Fees collected help defray the taxes and maintenance. Most of the use is by Somers residents, many of which live in Heritage Hills and neighbors. The courts are not open to the public, although in operation from 7:00 a.m. to 9:30 p.m., from September to May, they are never fully occupied. They may be used by reservation only and average 2 to 3 cars per reservation of a maximum of ten per day. When Ms. Ensinger purchased the property the neighbor to the north was concerned about the rusted roof, which was replaced. The exterior was redone in stone and Hardie Plank siding. Barn doors were added in an effort for it to replicate an equestrian structure. The planting of evergreens as a buffer was offered to another neighbor. They never accepted the invitation, but the offer still stands. There is no signage, exterior lights or amenities. The parking area has not changed and three of the four sides of the building are screened with 25' evergreens. Since she purchased the house and property in 2005, she has never received a complaint about the tennis use. Ms. Ensinger went on to say that in 2006 she and her husband donated a conservation easement to the Westchester Land Trust which runs with the land and has stipulations, which were shared.

Ms. Tortorella addressed the Board. In her opinion, this use qualifies and meets Section 170-3 of the Code if one takes the definition apart and looks at various terms that the Code doesn't address such as the definition of teacher. After reading aloud Merriam Webster's definition of teacher, she stated that in her opinion a tennis instructor may use tennis courts as their office. With regard to the 1973 condition of private use not commercial, Ms. Tortorella feels private does not mean personal. She is also not sure if the conditions are legal as they have nothing to do with the height of the building.

Chairman Cannistra cited Section 170-11 (6) (b) of the Code that says a home occupation cannot take place in more than ½ of the area of the floor of the dwelling unit and then shared the definition of a dwelling unit. Ms. Tortorella said it only applies to a home occupation that is in the dwelling unit. Chairman Cannistra went on to say that

his interpretation of an office or studio is when one person works in their home like a lawyer, accountant, etc. In his opinion, it is a stretch to say teaching tennis in a 12,000 square foot building is a home occupation.

Town Attorney Gerald Reilly does not think the Building Inspector's determination is unreasonable as tennis is not taught customarily in an office or studio of a residence. He also went on to say that historical use cannot be challenged. In addition, it is too late to appeal a condition set forth in 1973.

Chairman Cannistra stated that clearly what has been going on in the tennis building is a violation and cannot continue. In addition, accepting fees for a service is a commercial business. If this application is approved, what would prevent an electrician, plumber or contractor from wanting to do the same in a residential district.

Mr. Carpaneto feels that this application is a change of use or a use variance.

Mr. Reilly said there is a difference between private and commercial, as well as a profession and a skill, which is not for the Zoning Board of Appeals to determine. In addition, the Board cannot set a precedence. There is also no case law supporting this application.

Ms. D'Ippolito stated this is about occupations that can normally be conducted from a residence. If this application is approved, then residents can use their pools for swimming lessons and clinics. Where does one draw the line?

Chairman Cannistra opined that the request is not in line with the intent of the Code and an approval would change the character of the neighborhood. In the 15 years that he has been on the Board, there has never been a request to have a home occupation in an accessory structure.

Mr. Newman said given the size of the building and scope of use, if approved, it could easily turn into a commercial business.

Ms. Tortorella expressed concern over selling the property if the courts cannot continue to be used as they have been. Mr. Newman responding by saying someone bought the property to build the courts for their private use.

Ms. Ensinger asked if the tennis building could be turned into an equestrian facility and Mr. Reilly responded that is not a decision for the Zoning Board to make.

Attorney Arthur Morrison addressed the Board. He is representing neighbors Dennis and Paula Pastena and did send a letter electronically which was shared with all members of the Board. He complemented Town Attorney Gerald Reilly and said Mr. Reilly said all that he was going to say. There have been long established zoning laws against these types of applications and in his opinion ambiguity doesn't exist.

Maureen Devine of 10 Susan Drive addressed the Board. As a former Councilwoman she knew all the members of the Zoning Board of Appeals in 1973 and is quite sure they put forth the conditions on the variance to prevent something just like this from happening. She agrees with the decision of the Building Inspector. Mrs. Devine went on to read a letter she crafted out loud. Copies were provided for all members of the Board.

Gerald Messuri of 20 Orchard Hill Road addressed the Board. He has lived next door to the property for 34 years and has been quite friendly with all of the neighbors including the applicant. Mr. Messuri stated that he has been very tolerant of the traffic, but is afraid that this new proposal will evolve into a big business considering there is an inground pool on the property, hiking trails, and guest houses. No one has mentioned that there is a building with lockers, toilets, showers and sinks.

Neil Feinberg of 177 Main Street, East Hampton addressed the Board. He is the perspective buyer, which has been his dream since he first visited the property in 1998. He teaches tennis full-time to the children of two very wealthy clients. His vision is to immediately reduce the amount of traffic and use by 50 to 70%. Mr. Feinberg wants the neighbors to know who he is and what he wants to do. He is a professional and a member of the USPTA. His plans will be consistent with the original use. He will be the only instructor living on the property and there will be no camps or buses.

Steve Pietropaolo of 4 Hilltop Road addressed the Board. He has been a neighbor for 20 years. Mr. Pietropaolo stated he is an engineer as well as a code expert and has no objections to the application.

Romaine Gunther of 15 Orchard Hill Road addressed the Board. She has kept quiet for a long time, but has been annoyed by the number of cars that come in and out of the property every hour and a half, as well as by the car lights at night. Every owner of that property said they would not use it the way it has been used and that certainly has not been the case. Ms. Gunther thinks the application should be rejected.

James Rieger of 2 Catherine Place addressed the Board. In his opinion, this type of activity does not belong in a residential area.

Dennis Pastena owner of 23, 25 and 34 Orchard Hill Road addressed the Board. He can see the tennis building from his deck. Mr. Pastena would like to know who is going to monitor all these promises being made.

Robert Segal of 13 Orchard Hill Road addressed the Board. He has been a neighbor for 13 years. Before he purchased the property, he did a lot of research to be sure that there were no commercial businesses in the area and feels the potential could now come to fruition. In his opinion the Board needs to protect the interest of the Town by denying this application.

Ms. Tortorella addressed the Board. The applicant fully understands the sense of the Board, Counsel as well as the audience, and therefore withdraws her application. She also asked that the Board not render a decision.

CROSSROADS AT BALDWIN PLACE – 2019:ZB24 – 4.20-1-3.1-01

An application for an Area Variance for a sign that exceeds the maximum size in a Neighborhood Shopping District at **57 Route 6, Baldwin Place**. The property is shown on the Town Tax Map as **Section: 4.20, Block: 1, Lot: 3.1-01**. RE: Section Schedule 170-126-A(3).

Jim Polinsky of Signs Ink addressed the Board. The applicant is seeking a variance for the size of their double-sided sign as the allowable 20 square feet will not be able to accommodate 14 (6 retail and 8 offices) panels, the maximum number of tenants that could possible exist. The proposed sign is 40 square feet, stencil cut with white letters on a dark brown background. The letters only are internally lit. The sign will be perpendicular to the new commercial building, with retail on the ground level and offices on the 2nd floor. The Architectural Review Board did meet with the applicant and had no objections to the sign itself, but will meet with them again to further the discussion about the size of the brick base.

Mr. Newman would prefer a smaller sign.

Although Ms. D'Ippolito thinks the sign is tastefully done, she would like to stipulate that the individual panels all have a uniform font and logos not be allowed.

Mr. Carpaneto 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

Mr. Carpaneto	Aye
Ms. D'Ippolito	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

Mr. Harden made a motion to grant an Area Variance for a sign that exceeds the maximum size with the stipulation that the panels all have a uniform font and logos not be allowed. Mr. Carpaneto seconded the motion.

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

POLL OF THE BOARD

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

The Area Variance was approved.

OTHER BUSINESS:

The minutes of the June 11, 2019 meeting were approved as submitted.

The next monthly meeting of the Zoning Board of Appeals will be held on September 17, 2019 at 7:30 p.m. There being no further business, the meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board