

Telephone  
(914) 277-5582

ZONING BOARD OF APPEALS

TOWN HOUSE  
ANNEX  
337 ROUTE 202  
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.



AGENDA

January 17, 2023  
7:30 PM

1. **CARMEN AND SILVANA HULBERT**      **2023:ZB01**  
An application to renew a Special Exception Use Permit as a new owner for an existing accessory apartment in a detached accessory (cottage) to an existing one family dwelling in an R-80 Residential District at **17 Frances Drive, Katonah**. The property is shown on the Town Tax Map as **Section: 38.13, Block: 2, Lot: 25**. RE: Section Schedule: 170-70.
  
2. **UB SOMERS, INC.**      **2023:ZB02**  
An application for a height variance for a new business sign for AT&T in a Neighborhood Shopping District at **80 Route 6, Baldwin Place**. The property is shown on the Town Tax Map as **Section: 4.20, Block: 1, Lot: 11.5**. RE: Section Schedule: 170-126.
  
3. **OTHER BUSINESS**      December 20, 2022 Meeting Minutes  
  
Next Meeting – February 21, 2023



ZONING BOARD OF APPEALS  
**Town of Somers**  
WESTCHESTER COUNTY, N. Y.

TOWN HOUSE  
SOMERS, NEW YORK 10589  
(914) 277-5582

IN THE MATTER OF THE APPEAL  
OF  
*Carmen and Silvana Hulbert*

B Z NUMBER *2023 BZ01*  
DATE: *12/15/22*

TO THE ZONING BOARD OF APPEALS  
OF THE TOWN OF SOMERS, N. Y.:

1. *Carmen and Silvana Hulbert*  
(Name of appellant)  
whose post office address is *17 Frances Drive, Katonah, NY 10536*  
(Post office address)  
through .....  
(Name of attorney or representative if any)  
whose post office address is .....  
(Post office address)  
does hereby appeal to the Zoning Board of Appeals at the Town of Somers.

2. Such appeal is taken from a ruling of .....  
(Name of officer)  
....., made on .....  
(Office held)  
which ruling was filed on ..... and notice of such ruling was  
first received by appellant on .....; such ruling

(Give summary of ruling)  
*An application to renew a Special Exception  
Use Permit as a new owner for an  
existing accessory apartment in a  
detached accessory structure (cottage)  
to an existing one family dwelling in an R-80  
zone*

3. The property which is the subject of the appeal is located at or known as .....  
*17 Frances Drive* ..... and is shown on the  
(Street and number or distance from and names of nearest intersecting streets)  
Town Tax Map as Section: *38.13*, Block: *2* Lot: *25*  
The interest of the appellant is that of *owner*  
(Owner, tenant, etc.)

4. The appeal is taken (on the ground that the ruling or decision was erroneous) to obtain  
variance, permit or special permit. (Strike out wording not applicable.)  
(OVER)

5.

(Fill out (a) or (b) or both if applicable)

(a) The property which is the subject of the appeal is located at or known as .....

17 Francis Drive  
.....  
.....  
.....

(b) A variance, permit or special permit is sought because of practical difficulties or unnecessary hardship to the property as indicated below:

The Code of the Town of Somers states that a Special Exception Use Permit for an accessory apartment has to be renewed within 6 months of the property being sold to a new owner and such may be granted pursuant to 170-70

(Refer to applicable Provisions of the Zoning Ordinance of the Town of Somers)

Both applicant and owner must sign if they are different persons.

I Hereby Dispose And Say That All The Above Statements And The Statements Contained In The Papers Submitted Herewith Are True.

SWORN TO ME BEFORE THIS 15<sup>th</sup> DAY December 20 22  
Denise Schirmer NOTARY SIGNATURE  
OWNER SIGNATURE

NOTARY SIGNATURE DENISE SCHIRMER  
APPLICANT SIGNATURE  
Commission Expires March 10, 2026



ZONING BOARD OF APPEALS  
**Town of Somers**  
WESTCHESTER COUNTY, N. Y.

TOWN HOUSE  
SOMERS, NEW YORK 10589  
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IN THE MATTER OF THE APPEAL  
OF  
*UB Somers, LLC*

B Z NUMBER *2023: ZB02*  
DATE: *12-16-2022*

TO THE ZONING BOARD OF APPEALS  
OF THE TOWN OF SOMERS, N. Y.:

1. *Willing Biddle*  
(Name of appellant)  
whose post office address is *320 Railroad Avenue, Greenwich, CT*  
(Post office address)  
through *Julie Gomez* *06830*  
(Name of attorney or representative if any)  
whose post office address is *12550 Reed Road, Suite 100, Sugarland, Texas 77478*  
(Post office address)  
does hereby appeal to the Zoning Board of Appeals at the Town of Somers.

2. Such appeal is taken from a ruling of *Architectural Review*  
(Name of officer)  
*Board*, made on *December 1, 2022*  
(Office held)

which ruling was filed on ..... and notice of such ruling was  
first received by appellant on .....; such ruling  
.....  
(Give summary of ruling)

*An application for a 16" height  
variance for the logo that is  
part of the AT&T Sign over  
the store*

3. The property which is the subject of the appeal is located at or known as *80 Route 6*  
(Street and number or distance from and names of nearest intersecting streets)  
Town Tax Map as Section: *4.20*, Block: *1*, Lot: *11.5*  
The interest of the appellant is that of *owner*  
(Owner, tenant, etc.)

4. The appeal is taken (on the ground that the ruling or decision was erroneous) to obtain  
variance, permit or special permit. (Strike out wording not applicable.)

(OVER)

5.

(Fill out (a) or (b) or both if applicable)

(a) The property which is the subject of the appeal is located at or known as.....

80 Ponds Ln  
.....  
.....  
.....

(b) A variance, permit or special permit is sought because of practical difficulties or unnecessary hardship to the property as indicated below:

As per the Code of the Town of Somers a sign cannot exceed 24" in height - the proposed logo is 16" - to make it any shorter would distort its and such may be granted pursuant to 170-126 figure

(Refer to applicable Provisions of the Zoning Ordinance of the Town of Somers)

Both applicant and owner must sign if they are different persons.

I Hereby Dispose And Say That All The Above Statements And The Statements Contained In The Papers Submitted Herewith Are True.

SWORN TO ME BEFORE THIS 19<sup>th</sup> DAY December 20 22

*Joanne Phillips*  
NOTARY SIGNATURE

US SOMERS, INC.  
*Andrew Abrecht*  
OWNER SIGNATURE Andrew Abrecht, Vice President

JOANNE PHILLIPS  
NOTARY PUBLIC  
STATE OF CONNECTICUT  
MY COMMISSION EXPIRES 12/31/23

NOTARY SIGNATURE

11/30/25  
*[Signature]*  
APPLICANT SIGNATURE

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ZONING BOARD OF APPEALS

TOWN HOUSE  
ANNEX  
337 ROUTE 202  
SOMERS, NY 10589

Victor Cannistra  
Chairman

**Town of Somers**

WESTCHESTER COUNTY, N.Y.



**Meeting Minutes**  
December 20, 2022

The meeting was called to order by Chairman Cannistra at 7:30 p.m. with the Pledge of Allegiance.

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

Mr. Padovani absent.

Building Inspector Tom Tooma and interested residents were also present.

**APPLICANTS**

**39 CYPRESS LANE, LLC - 2022:ZB33 – 18.13-2-16**

An application for a variance to raise the perimeter grade of an existing one family dwelling to make it conforming in height in an R-10 Residential District at 52 Lake Way, Purdys. The property is on the Town Tax Map as Section: 18.13, Block: 2, Lot: 16. RE: Section Schedule 170:A1 Zoning Schedule Part 1.

Attorney Michael Sirignano addressed the Board. He is joined by property owner Juan Serrano and potential buyer of the property Anthony Marinelli. On August 3, 2021 Building Permit was issued by the Building Department to add a 2<sup>nd</sup> story to an existing 2-bedroom one family dwelling, as reflected on the plans submitted with the Building Permit application. The existing roof was removed and the 2<sup>nd</sup> story framed out when the neighbors (both of whom are architects) across the street expressed their concerns to the Building Department. A Stop Work Order was issued as grading was not proposed as part of the original application at the time of the issuance of the Building Permit. The architects got involved and there was much back and forth deliberation over the grading being done and the height of the new roof. In a letter dated October

11, 2022 from the Building Inspector to the owner of the property, their most recent plans of September 27, 2022 were denied as although the building height shown on the plans conforms to code requirements, it is the opinion of the Building Inspector that it is not within the intent of zoning to raise the perimeter grade of a dwelling to make it conforming in height. Mr. Sirignano stated that he disagrees as State and Town codes clearly indicate that the height starts at the finished grade level, and although, there is not a definition in the code for finished grad level there is a customary meaning in the Merriam Webster Dictionary which would suffice. In addition, situations such of these that have ended up in court ended in favor of the property owner. Mr. Sirignano feels the first order of business is for the Zoning Board to determine if the natural grade or the finished grade determines the height of the building to the peak of its roof. Depending on the outcome, a variance will not be needed. Ultimately the owner needs to complete the house and to remove the new roof would be an enormous expense and hardship. Construction to date was build as per the drawings submitted and the height of the dwelling will not be a detriment to the neighborhood.

Pictures of what the house looks like today were shared. Upon purchase of the property, there were stockpiles of soil that will be used for grading. No additional soil will be imported or needed. The natural grade to the finished grade varies per elevation, but is about 3' in the front and 5' in the rear. The footprint of the dwelling has not changed. The applicant was reminded that the Board has no jurisdiction over interpreting State codes, only those of the Town. Grading with new construction would have had to gone through the Planning Board process. When this project was presented to the Building Inspector it was for a 2<sup>nd</sup> story only and there was no mention of grading. Some of the Board members do not see a differentiation between the grade of new construction and renovations in the Town Code. Prior to this renovation, the access into the house was what is not the basement, an unfinished area. In Mr. Tooma's opinion, you measure the height of the building where the grade meets the building.

Jim Horizny of 51 Lake Way addressed the Board. He extended his thanks to Mr. Tooma and his department staff for their attention to this matter. Mr. Horizny is an architect and his issue is with that of the timeline in which things happened. On August 21, 2021, massive amounts of trees began to be removed with no tree removal permit and by the 30<sup>th</sup> of August all trees the owner didn't want were removed. A copy of a survey from 1928 was obtained. The house was 2.5 stories high with doors on all four sides of this house. In his opinion it is now a 3-story house. Photos of the current elevations were shared. A Stop Work Order was issued on September 13, 2021 and to date has been obeyed and the Building Permit has expired. The septic and well is in front of the house. There is not as much soil stockpiled as they think. In his opinion they will have to scrap soil from what is existing or import soil, which is not a good solution. In Mr. Horizny's opinion, there is a lot of information missing from the drawings; life safety codes are being ignored; there is no proof of Engineering Department approvals; this project should have been required to go through a site plan review process with the Planning Board not request a variance from the Zoning Board; the driveway is quite steep which could hinder emergency vehicles from getting to the

house; the existing deck is very old; the owner will definitely have to import soil to accomplish what he wants to do and one only knows what will be in that soil; environmental impacts exist; adding a 3<sup>rd</sup> floor, spot zoning, illegal, will set a precedence and needs to be removed; and Mr. Horizny agrees with Mr. Tooma's decision. Mr. Horizny was reminded that the Zoning Board has no jurisdiction over some of his concerns.

Mayda Horizny of 51 Lake Way is Jim Horizny's wife, and also an architect. They have lived in their home for 37 years. She said that in her opinion, there are some inconsistencies with Mr. Sirignano's presentation, the roof was raised 8'9", not 3'9"; the ground floor is not the basement, it is the 1<sup>st</sup> floor and they added 2 floors above it; the more restrictive code should always be followed; there is no proof of Engineering Department approval; the revised Master Plan states that the character of neighborhoods should be protected and the lake communities, one of which is Purdys are sensitive; the project can be accomplished with a better plan; there are environmental issues; the drainage has to be changed; soil will definitely have to be imported; way to many trees were removed; the owner is building to only maximize his profits; she wants the improvements to be done correctly and as presented they do not belong in their neighborhood. Mrs. Horizny shared pictures of the other houses in the neighborhood with the Board.

Stephen Modica of 50 Lake Way addressed the Board. This project has been at a standstill for over a year and in his opinion an eyesore. He is not concerned about the height of the dwelling as he cannot see it and there are other houses in the area with two stories. There is a large pile of cut wood that borders his property and he has vermin concerns. He would just like everybody to reach an agreement that will make them happy.

Thomas Scarano of 54 Lake Way addressed the Board. He agrees that soil will have to be brought in and would like to see the property cleaned up as well as the project finished. Mr. Scarano understands why so many trees were removed as they were old hemlocks. He has no issue with the proposed height of the house. In closing, Mr. Scarano said he took care of the former owner and the entrance was in to a basement, not a first floor. There was a staircase in the basement going up to the 1<sup>st</sup> floor. This addition is a 2<sup>nd</sup> floor, not a 3<sup>rd</sup> floor.

Elaine Curran of 82 Entrance Way addressed the Board. She has been a resident for 40 years. From certain spots that she can see the house it looks like an apartment building, will set a precedence and will not keep with the character of the neighborhood. There is a house in foreclosure behind her property and she is concerned that if the 52 Lake Way project goes on as is, the eventual purchaser of that house might want to do the same.

Mr. Lansky lives near 52 Lake Way and said it is an eyesore as it sits and is probably too big for the existing footprint, however that is not what the application before the



Board is about. It is about whether the Board agrees or disagrees with Mr. Tooma's interpretation and depending on that outcome, whether to approve a variance.

Mr. Newman said the house is big, tall and imposing as it sits high up from the road, but just getting it finished should not influence the Board member's decision. Mr. Tooma confirmed that 50 yards or a disturbance of 5,000 square feet or larger would require a permit from Planning and Engineering. In addition, in Mr. Tooma's opinion, a basement is considered a story.

Mr. Harden feels as though the owner will have to import soil to raise the level of the house to get around the Zoning Board and he is not okay with that.

Mr. Guyot suggests that maybe the Board members need to visit the property and walk around all elevations of the house before a decision can be made. Mr. Tooma said that the average grade is calculated of the entire perimeter of the dwelling. You can't just add fill to change the height requirements, which is why he stopped the project from moving forward.

Mr. Sirignano addressed the Board again. Many of the issues brought up by the neighbors across the street are not relevant to the application. The septic will be upgraded as part of the project. Whether the dwelling will be 2.5 or 3 stories is not in front of the Board. The only issue is whether the height of the house is from the pre-existing or finished grade. The architect who drew the plans for this project assured the owner that no additional soil will have to be brought in. Aesthetics of the completed house is the concern of the Architectural Review Board, not the Zoning Board of Appeals. Neither of the abutting neighbors have an issue. Screening certainly can be done and there is a plan for lots of landscaping. Mr. Sirignano doesn't see the need for a site visit and requests that the Board vote on the interpretation this evening.

Mr. Lansky reiterated that there is ambiguity and the code is the code, therefore an interpretation is not needed. Mr. Tooma said if the plans submitted showed the actual grade, he would not have issued a Building Permit, but sent the owner to the Planning and Engineering Department for proposed grading. Mr. Newman doesn't understand the need for an interpretation. Ms. D'Ippolito agrees with Mr. Tooma's interpretation, the existing grade is the finished grade. Mr. Guyot would like to see the grade changes to accommodate the number of stories. Mr. Cannistra doesn't like having to be put in this type of situation as the result of an error made by the Architect, who really should have been present at this meeting. Mr. Harden understands Mr. Tooma's decision, but doesn't agree with it. Mr. Lansky said grade raising happens all the time and this should not be a concern with this application. Mr. Sirignano said the Board cannot just agree or disagree with the Building Inspector's decision; a definitive ruling is needed.

Mr. Guyot made a motion for a Type II action. 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. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

A motion was made by Mr. Lansky that the height of the building is from the mean final grade adjacent to the building as measured by the building department at time of final inspection. Mr. Guyot seconded the motion.

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

**POLL OF THE BOARD**

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

A motion was made by Mr. Lansky that Building Inspector Tom Tooma incorrectly denied the plans submitted for 52 Lake Way on September 27, 2022. Mr. Guyot seconded the motion.

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

**POLL OF THE BOARD**

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

Mr. Sirignano requested that the application be adjourned until the January 17, 2023 meeting.

**Special Exception Use Permit Renewals for Accessory Apartments Update –** Section 170-70 defines the standards and requirements for the granting of a Special Exception Use Permit for an accessory apartment and Mr. Lansky suggested that

each application submitted to the Board indicates whether those individual standards and requirements are being met by the application. A checklist was drafted and shared with all for comment. A couple of suggested changes were made. Mr. Cannistra asked that clarity be made that the principal building to the accessory apartment must have been built prior to 1992. Mrs. Schirmer will tweak the checklist and it will be put into use in January 2023.

**Minutes** – The minutes of the November 15, 2022 meeting were approved as submitted.

The next monthly meeting of the Zoning Board of Appeals will be held on January 17, 2023 at 7:30 p.m. With there being no further business, the meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Denise Schirmer, Secretary  
Zoning Board of Appeals

cc: Town Board  
Town Clerk  
Planning and Engineering  
Planning Board