

(914) 277-5582

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**

February 21, 2023

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, Mr. Guyot, Mr. Harden, Mr. Lansky, and Mr. Newman.

Ms. D'Ippolito and Mr. Padovani were absent.

Building Inspector Tom Tooma and interested residents were also present.

**APPLICANTS**

**JEFFREY AND ANDREA WEISBROT - 2023:ZB03 – 38.06-1-6**

An application to renew a Special Exception Use Permit for an existing accessory apartment attached to an existing one family dwelling in an R-80 Residential District at 28 Young Road, Katonah. The property is on the Town Tax Map as Section: 38.06, Block: 1, Lot: 6. RE: Section Schedule 170-70.

Jeffrey Weisbrot addressed the Board. The apartment is unoccupied. It is over the existing garage attached to the dwelling. Building Inspector Tom Tooma inspected the apartment on January 4th, no changes have been made and it is identical to the plan on file. The entry into the apartment is from the inside of the dwelling. There have been no complaints or issues.

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**

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

Mr. Harden made a motion to approve the Special Exception Use Permit for an accessory apartment attached to the existing one family dwelling for the next 7 years. Mr. Guyot seconded the motion.

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

**POLL OF THE BOARD**

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

**UB Somers, Inc. - 2023:ZB02 – 4.20-1-11.5**

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 on the Town Tax Map as Section: 4.20, Block: 1, Lot: 11.5. RE: Section Schedule 170-126.

Joshua Cohen of Signarama in Millwood, NY addressed the Board. A 16” height variance is being request to accommodate the globe logo for the AT&T store in the Somers Commons at 80 Route 6. The Architectural Review Board submitted a letter of support for the variance request. Various designs for the sign were submitted and the only solution as to not distort the globe logo was increasing its height.

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**

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

Mr. Newman made a motion to approve a 16” height variance for the AT&T sign. Mr. Harden seconded the motion.

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

**POLL OF THE BOARD**

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

**VICTOR AND DEBORAH WU - 2023:ZB04 – 58.12-1-10**

An application for a side yard area variance for an existing inground pool accessory to an existing one family dwelling in an R-80 Residential District at 8 Silver Springs Court, Katonah. The property is on the Town Tax Map as Section: 58.12, Block: 1, Lot: 10. RE: Section Schedule 170-70.

Attorney Michael Caruso addressed the Board. The required side yard setback for his client’s inground pool is 15’, but only 11’- 6” exists, therefore they are requesting a 3’ – 4” variance. Building Inspector Tom Tooma sent a letter to his clients on October 25, 2022 indicating that the issuance of a Certificate of Occupancy for the inground pool was denied as it didn’t meet the 15’ required setback for a R-80 Zoning District. On December 23, 2022, Mr. Caruso submitted an application for the Zoning Board to Mr. Tooma, it was stamped in and a discussion ensued between Mr. Caruso and Mr. Tooma about the application. The circumstances surrounding this application are unusual as some of the finishings (patio, underground piping and wiring, fencing) for the inground pool were actually on the property of the neighbor at 4 Silver Springs Court. His clients were unaware of this situation. A reputable pool company was hired in 2019 to install the pool and they used the survey in the Building Department to stake out the location of the pool. It wasn’t until the neighbor’s suspected there was an issue when an aerial photo was taken of their property, that this encroachment came to light. Both parties had their property’s surveyed, and what was suspected was in fact true. As directed by the Somers Town Court, the Wu’s were to return their neighbor’s property to its original condition before this happened. As work was done since the submission of the December 23, 2022 submission, Mr. Caruso amended the supporting documentation to include the updated work completed and resubmitted the application on February 1<sup>st</sup> to the Secretary of the Board. Mr. Caruso stated that the application being reviewed and discussed this evening adheres to all the requirements necessary to apply for a variance. Before and after pictures were included in the supporting documentation. It was also noted that the Building Inspector, Principal Engineering Technician and Town Supervisor have visited the property regarding the issues. In addition, an architect firm was hired in an attempt to get guidance in repairing the encroachment.

It was noted that the fence posts are still standing on the neighbor's property but they are not allowing the Wu's on their property to remove them as the neighbor claims that as per the Town Court, a plan for repair is required and to be approved by them and they have yet to receive it. Mr. Caruso said as per the court stipulation his clients still have 5 months in which to restore the neighbor's property.

Victor Wu addressed the Board. When this situation was brought to their attention they immediately spoke to their neighbors about a resolution. An offer was made to purchase the section of their property with the encroachment and have a lot line adjustment done. The response was "I do not want your money" and "I want a clean property line". Other options, an easement, plantings and adverse possession, were discussed to no avail. Since that time, extensive demands have been put on them by their neighbors, reimbursement for legal and survey fees, restoration of the land as per their liking, tree work and drainage/water issues (Mr. Wu noted the drainage/water issues had nothing at all to do with the pool situation, as they have been in existence since the prior owner and Hurricane Ida a few years back made them worse). Mr. Wu went on to say that he recently had a topographical survey done of his property that proved the drainage/water issues had nothing to do with his property.

Mr. Caruso stated that a letter was received hours ago from the neighbor's attorney Whitney Singleton who claims the application before the Board this evening is not timely as an amended application was submitted after December 23, 2022. Mr. Singleton also feels the application now before the Board is the same as the one submitted to the Board last June. In Mr. Caruso's opinion, this is a simple matter to judicate and the clock does not restart, as the application in June was withdrawn and no decision was made. The application before the Board this evening is a new submission.

Mr. Singleton addressed the Board. In his opinion, Mr. Caruso provided a misrepresentation. The clock is restarting and the Board is without authority to hear the application as it is identical to the application submitted last June. What you are hearing this evening is just a regurgitation of that application. Mr. Singleton went on to say that the Wu's knew exactly what they were doing and removed the stakes that were posted by their pool company. In addition, they have been defiant about resolving the encroachment as soon as it was brought to their attention. This could have all be a moot issue by now if the Wu's would have just paid his clients the requested \$27,000 for lawyer and survey fees, as well as repairs to their sprinkler system, trees and drainage as a result of the installation of their pool. The Wu's response to the request was that it was extortion. Mr. Singleton said that throughout this situation, his clients have been nothing but cooperative.

Mr. Caruso reminded the Board that regardless, a variance is needed for the distance of the inground pool to the property line, and in order to be in compliance and that request could not be made until the section of the fence that was on the neighbor's property was moved back to the Wu's property, which has been done.

Mr. Singleton indicated once again that the request is untimely and the new application before the Board this evening is just a rearrangement of words from the application of last June. Mr. Lansky argued that the applications are different and Mr. Tooma's letters indicate that they are different as well. Mr. Caruso agreed with Mr. Lansky and thanked him for his opinion. Mr. Lansky said it comes down to two questions, whether there was a material change in the aspects of the case or substantial change of circumstances?

The opinions of the Board members were mixed, some thought the neighbors should settle their differences and once done, the Wu's should return to the Board seeking a variance; some wanted to seek Town counsel, but not from Gerry Reilly as he was involved in the Wu's Town Court case and it may be perceived as a conflict; and some thought the Board should just make a decision based on what was presented this evening. Mr. Caruso agrees that counsel sought should be other than Mr. Reilly. Mr. Singleton sees no conflict with Mr. Reilly advising the Board.

Any Stanciu of 4 Silver Springs Court addressed the Board. Although a lot has been said, she indicated that all of the encroachment damages to her property have still not been taken care of. The Court said they had to have a plan for the repairs and Mrs. Stanciu has yet to see the plan or had the opportunity to approve it. The work just commenced with no permission from her for anyone to be on her property. She also wanted the Board to know that when this situation was discovered they approached their neighbors and the refused to cooperate from the very beginning. As a result, they have had to spend money on a new property survey and legal fees to defend their property.

Panta Stanciu of 4 Silver Springs Court addressed the Board. When this situation came to light, he sat down with Mr. Wu like he was family and said let's straighten this out without lawyers and he refused. Ever since their pool was installed, he has had nothing but problems and now there are ½" cracks in his driveway. He feels as though he has no other option but to sue them and make them remove their pool.

Deborah Wu of 8 Silver Springs Court addressed the Board. She has owned her house since 2006. In 2007, they installed a patio enclosed by a fence. Any work that was done on their property was done by the requirements of the Town. In 2019, three weeks after the Stancius moved in, after acquiring a building permit, they started digging to have their pool installed. They asked the Stancius if the pool company could access their property via their driveway to place the pool in the ground as it was the easiest way to do it. The Stancius had no problem with them doing that and the Wus took before and after pictures of the driveway in case there was any damage and there was not. The ½" cracks in their driveway that Mr. Stanciu referred to were there when they moved in. The house was vacant for 1 ½ years prior to their purchase and it had not been maintained. There was mention of damage to the Stanciu's trees. They were in the same state when they moved in as they are now. After the pool was complete, a temporary fence was installed as the Wu's couldn't get the privacy fence they wanted in time due to Covid. When their privacy fence was finally installed, the Stanciu's said they needed to take it down because they didn't like it. The drainage/water issues the

Stanciu's referenced existed prior to their purchase of the property and Hurricane Ida made them worse. Recently, they had a topographical survey done to prove that none of the Stanciu's drainage/water issues are a fault of theirs. Mrs. Wu wanted the Board to know that when they were made aware of the situation with the pool, they immediately approached the Stancius and had a gentleman's agreement to take care of it without issues. The next day, the Wu's were informed that the Stancius contacted a lawyer and were given a list of items that there was a problem with and they wanted the Wu's to pay for rectifying. Mrs. Wu said once they had a lawyer, they were forced to secure one as well. In closing, Mrs. Wu said while they were waiting for the Stanciu's permission to go on their property to start making the repairs from the pool encroachment, the Stanciu's destroyed their fence and threw it back on to their property. That action cost the Wu's \$10,000. This entire process has been nothing but a lot of lies.

Mr. Lansky said it makes absolutely no sense that the Wu's would intentionally hire a professional to cause such havoc. He reiterated, the questions are whether there was a material change in the aspects of the case or substantial change of circumstances? Mrs. Schirmer was asked to request seeking Town Counsel and to propose the two questions to them.

Chairman Cannistra adjourned the application to the March 21<sup>st</sup> meeting. Any additional information required for that meeting should be submitted to the Board Secretary a week from today.

**Minutes** – The minutes of the January 17, 2023 meeting were approved as submitted, however Mr. Guyot recused himself as he was not present at the January meeting.

The next monthly meeting of the Zoning Board of Appeals will be held on March 21, 2023 at 7:30 p.m. With there being no further business, the meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Denise Schirmer, Secretary  
Zoning Board of Appeals

cc: Town Board  
Town Clerk  
Planning and Engineering  
Planning Board