

(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**

March 28, 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, Ms. D'Ippolito, Mr. Guyot, Mr. Harden, Mr. Lansky, Mr. Newman, and Mr. Padovani.

Interested residents were also present.

**APPLICANTS**

**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:A1 Zoning Schedule Part 1.

The Wu's application was heard by the Board at their February 21, 2023 meeting. At the conclusion of the meeting, a decision was made to seek legal counsel regarding the application two answer two questions, whether there was a material change in the aspects of the case or substantial change of circumstances? A decision was made to go into Executive Session this evening before the meeting to discuss this further.

Chairman Cannistra asked Mrs. Schirmer to reach out to the Wu's attorney, as well as that of the neighbor's, to inform them that the Wu's application will be heard again at the April 18<sup>th</sup> meeting and the attorneys should provide her with any submissions they have specific to the timeliness of the second application and if it is materially different from the first application submitted.

**DAVID AND CHRISTINE BROOKS - 2023:ZB05 – 27.17-2-1**

An application to renew a Special Exception Use Permit for an existing accessory apartment in a detached accessory to an existing one family dwelling in an R-80 Residential District at 30 Lake Road, Katonah. The property is on the Town Tax Map as Section: 27.17, Block: 2, Lot: 1. RE: Section Schedule 170-70.

David Brooks addressed the Board. His mother-in-law lives in the apartment for only part of the year. Building Inspector Tom Tooma inspected the apartment on February 2nd, no changes have been made and it is identical to the plan on file. There have been no complaints or issues. It was noted that the accessory apartment is only permitted as long as it is occupied by Marion Connelly.

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
Mr. Padovani	Aye
Chairman Cannistra	Aye

Ms. D’Ippolito made a motion to approve the Special Exception Use Permit for an accessory apartment in a detached accessory to the existing one family dwelling for the next 7 years, with the condition that the apartment is only permitted if occupied by Marion Connelly. 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
Mr. Padovani	Aye
Chairman Cannistra	Aye

**NATALIYA VISHNEVSKAYA- 2023:ZB06 – 16.10-3-25**

An application for a side yard area variance for an existing garage to an existing one family dwelling in an R-10 Residential District at 7 Old Mill Road, Yorktown Heights.

The property is on the Town Tax Map as Section: 16.10, Block: 3, Lot: 25. RE: Section Schedule 170:A1 Zoning Schedule Part 1.

Property owner Nataliya Vishnevskaya and realtor Anna Bermeo addressed the Board. Ms. Vishnevskaya recently bought the property and when acquiring about work to be done on the garage and an existing deck, she was informed that the one-story garage was too close to the property line. It needs to be 15' from the property line, but is only 6'-2", therefore she is seeking an 8'-8" variance. There are some trees between the garage and the neighbor's property. Ms. Vishnevskaya property is 23,000 square feet, which is quite a large piece of property for an R-10 Residential District.

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
Mr. Padovani	Aye
Chairman Cannistra	Aye

Mr. Harden made a motion to approve an 8' – 8" side yard area variance for an existing garage. 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. Lansky	Aye
Mr. Newman	Aye
Mr. Padovani	Aye
Chairman Cannistra	Aye

**DANIELLE FENNESSY - 2023:ZB07 – 27.11-2-7**

A discussion regarding an application to renew a Special Exception Use Permit as a new owner for an existing accessory apartment in an existing one family dwelling in an R-80 Residential District at 31 Valley Pond Road, Katonah. The property is on the Town Tax Map as Section: 27.11, Block: 2, Lot: 7. RE: Section Schedule 170-70.

Danielle Fennessy addressed the Board. In 2021, she purchased the house with an existing accessory apartment. Knowing that she had to renew the Special Exception Use Permit as a new owner within 6 months of purchasing the property, she reached out to Mrs. Schirmer to process the application to do so with the Zoning Board. Arrangements were made to have Building Inspector Tom Tooma inspect the apartment as required by code. When Mr. Tooma visited the property, with the accessory apartment plans in hand, he discovered that the apartment was on the top floor of the house, but should have been on the main floor of the house. In addition, as per the resolution generated in 1993 by the Zoning Board to legalize the accessory apartment, it was to be 1,137 square feet and to have one bedroom, it was 1,680 square feet and had two bedrooms. Ms. Fennessy was told that the apartment could not be rented until this situation was straightened out. She is requesting that the Zoning Board agree to approve the Special Exception Use Permit for the accessory apartment as it was built and given a Certificate of Occupancy for and renewed at least three or four times.

Richard Mancini, Sr. of 8 Elide Road addressed the Board. Ms. Fennessy is his daughter-in-law. As a builder, he said that the apartment was never on the main floor of the house, was always on the top floor, was 1,680 square feet and had two bedrooms. It is impossible to get from the top floor to the main floor. Mr. Mancini said it is obvious that someone made an error by allowing the accessory apartment to be legalized with the size and the number of bedrooms not as approved by the Zoning Board. In addition, the Special Exception Use Permit was renewed as a new owner by the new owner when they purchased the house in 1995 and every seven years as required thereafter without an issue. His daughter-in-law provided a letter from an architect that indicates that as a result of an inspection he did, there have been no changes to the apartment since it was legalized in 1993.

Richard Mancini, Jr. addressed the Board. When his wife purchased the property, the mortgage was contingent on the accessory apartment being legal. She received clarification from the Building Department that the apartment passed its required inspections, and now he feels they are being punished when it is now clear that due diligence was not in fact done by the Building Department. If the plans on file were brought to the accessory apartment inspections as they are required to do, this situation would have been noticed a long time ago. When legalized it should have never passed its final inspection as it wasn't built as per the approval of the Zoning Board. This discovery has now presented them with a financial hardship as they needed the income from renting the apartment to make ends meet. As a result of this, his wife had to change her career path to make more money and is doing so by working in the city and never sees her children. It was noted that case law has proven that the Building Department would not be held liable.

Although the Board understood that the situation was not self-created by the current owner, there is a concern that the apartment is currently 1,680 square feet, which is double of the 800 square feet allowed. If an error was made, it clearly was not made by the Zoning Board as they were renewing the Special Exception Use Permit based on the information that was being given to them, which they would assume was accurate.

With that in mind, agreeing to renew the Special Exception Use Permit for an accessory apartment that large would go against what the Board is charged to do. It would also create a precedence.

Other suggestions made were to eliminate the second bedroom by reconfiguring the apartment and reduce it in size to what was approved by the Zoning Board when the apartment was legalized, 1,137 square feet; limit the number of people who can live in the apartment; apply for a use variance so it may remain as is and become a two-family house; move the accessory apartment to the basement; and hire an attorney to help resolve the dilemma they have, as the Zoning Board can't really give advice.

Richard Mancini, Sr. addressed the Board again and said although he appreciates the ideas shared, some would be impossible to do. He reminded everyone again that the situation is truly a hardship, as his son and daughter-in-law purchased this house to benefit from the income of having the accessory apartment and they simply don't have the funds to see some of the suggestions to fruition. As initially requested, his daughter-in-law would like to have the apartment renewed as the new owner as it exists.

Joan Mancini of Elide Road addressed the Board. She doesn't understand why her daughter-in-law should try to apply for a Use Variance, which is a very difficult thing to do, as there is really no difference between an accessory apartment and a two family house as the bedroom count and the amount of people that can reside will not change.

A motion was made by Mr. Lansky and seconded by Ms. D'Ippolito to close the matter. All were in favor. Ms. Fennessy was told to reach out to Mrs. Schirmer when she is prepared to submit an application that the Board could vote on.

**39 CYPRESS LANE, LLC - 2022:ZB33 – 18.13-2-16 (CARRYOVER – POSTPONED)**

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.

Chairman Cannistra announced that there has been no update as to when or even if the 39 Cypress Lane, LLC application will be before the Board again.

**Minutes** – The minutes of the February 21, 2023 meeting were approved as submitted.

The next monthly meeting of the Zoning Board of Appeals will be held on April 18, 2023 at 7:30 p.m. With there being no further business, the meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Denise Schirmer, Secretary  
Zoning Board of Appeals

cc: Town Board  
Town Clerk  
Planning and Engineering  
Planning Board