

(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**

April 18, 2023

The meeting was called to order by Chairman Cannistra at 7:35 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 was absent.

Building Inspector, Tom Tooma and interested residents were also present.

**APPLICANTS**

**EILEEN ALLMAN - 2023:ZB08 – 38.09-2-32**

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 Frances Drive, Katonah. The property is on the Town Tax Map as Section: 38.09, Block: 2, Lot: 32. RE: Section Schedule 170-70.

Eileen Allman addressed the Board. She lives in the apartment. Building Inspector Tom Tooma inspected the apartment on March 15, no changes have been made and it is identical to the plan on file. 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**

Ms. D'Ippolito	Aye
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 in an attached accessory 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**

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

**WILLIAM AND MARIANNA BREGLIO - 2023:ZB09 – 5.16-2-10**

An application to renew a Special Exception Use Permit for an existing accessory apartment in the basement of an existing one family dwelling in an R-40 Residential District at 11 Franklin Drive, Mahopac. The property is on the Town Tax Map as Section: 5.16, Block: 2, Lot: 10. RE: Section Schedule 170-70.

William Breglio addressed the Board. The apartment is vacant. Building Inspector Tom Tooma inspected the apartment on March 31, no changes have been made and it is identical to the plan on file. 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**

Ms. D'Ippolito	Aye
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 in the basement of an existing one family dwelling for the next 7 years. 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. Lansky	Aye
Mr. Newman	Aye
Chairman Cannistra	Aye

**LOUIS EKAIREB - 2023:ZB10 – 48.14-1-3**

An application to renew a Special Exception Use Permit for an existing accessory apartment on the 2<sup>nd</sup> floor of a four-car detached accessory of an existing one family dwelling in an R-120 Residential District at 99 Moseman Avenue, Katonah. The property is on the Town Tax Map as Section: 48.14, Block: 1, Lot: 3. RE: Section Schedule 170-70.

Louis Ekaireb addressed the Board. A couple, who are also caretakers, live in the apartment. Building Inspector Tom Tooma inspected the apartment on February 23, no changes have been made and it is identical to the plan on file. 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**

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

Ms. D'Ippolito made a motion to approve the Special Exception Use Permit for an accessory apartment on the 2<sup>nd</sup> floor of a 4-car detached accessory of an existing one family dwelling for the next 7 years. 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

**CAROL MEENAGH - 2023:ZB11 – 36.07-1-33**

An application to renew a Special Exception Use Permit for an existing accessory apartment in the basement of an existing one family dwelling in an R-10 Residential District at 23 Lakeview Terrace, Amawalk. The property is on the Town Tax Map as Section: 36.07, Block: 1, Lot: 33. RE: Section Schedule 170-70.

Carol Meenagh addressed the Board. Her mother lives in the apartment. Building Inspector Tom Tooma inspected the apartment on March 15, no changes have been made and it is identical to the plan on file. 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**

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

Ms. D’Ippolito made a motion to approve the Special Exception Use Permit for an accessory apartment in the basement of an 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**

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

**ALBERT TOTTEN - 2023:ZB12 – 7.13-1-19**

An application to renew a Special Exception Use Permit for an existing accessory apartment in the basement of an existing one family dwelling in an R-40 Residential District at 47 Stone House Road, Somers. The property is on the Town Tax Map as Section: 7.13, Block: 1, Lot: 19. RE: Section Schedule 170-70.

No one was in attendance to present the application.

**JOHN AND ELIZABETH LEARY - 2023:ZB13 – 47.16-1-11**

An application for proposed alterations to an existing accessory apartment in a detached accessory to an existing one family dwelling in an R-80 Residential District at 108 Pines Bridge Road, Katonah. The property is on the Town Tax Map as Section: 47.16, Block: 1, Lot: 11. RE: Section Schedule 170-70.

John Leary addressed the Board. In November 2022 his Special Exception Use Permit for an existing accessory apartment on the 1<sup>st</sup> and 2<sup>nd</sup> floors of an existing detached accessory garage was approved. His mother-in-law, who has some mobility issues, will be moving into the apartment and as a result, the apartment needs to be altered so that it is all on the 1<sup>st</sup> floor. Currently, the kitchen, living and laundry rooms are on the 1<sup>st</sup> floor along with a garage, as well as a storage area. A bedroom, bathroom, office and art studio are on the 2<sup>nd</sup> floor. There is also a deck off the 2<sup>nd</sup> floor. The bedroom and bathroom will be moved to the 1<sup>st</sup> floor where the current garage is. The 2<sup>nd</sup> floor will remain an office and art studio. An outside staircase will be added to the 2<sup>nd</sup> floor deck to gain access to that floor. A door will be placed at the top of the existing stairs that go from the 1<sup>st</sup> floor to the 2<sup>nd</sup>.

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

Mr. Newman made a motion to approve a Special Exception Use Permit for an accessory apartment on the 1<sup>st</sup> floor of a detached accessory. 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

### **VICTOR AND DEBORAH WU - 2023:ZB04 – 58.12-1-10 (CARRYOVER)**

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? On March 28, 2023 the Board went into Executive Session before the meeting to discuss this further and as a result, 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 this evening's meeting and the attorneys should provide Mrs. Schirmer with any submissions they have specific to the timeliness of the second application and if it is materially different from the first application submitted.

Attorney Mike Caruso handed in a submission on March 31, 2023 on behalf of his clients Deborah and Victor Wu. He addressed the Board with a summary of that submission, which addresses the questions of whether the application was a duplication of the application submitted in June 2022 by the Wu's then attorney Dan Tota and is the current application timely. It was noted that at the end of the June 2022 Zoning Board of Appeals meeting, the application was withdrawn by Mr. Tota and no decision was made. Mr. Caruso suggested that in the meantime, things have in fact changed. The Town Court gave a conditional discharge for the Notice of Violation issued for the swimming pool not meeting the 15' required set back and the swimming pool barrier not being located within the property boundaries, with the understanding that the Wus are to correct the violation of the encroachment, for which they were given a year to do so. That requirement is just about complete and the year is not yet over. The current application before the Zoning Board of Appeals is for a variance as the swimming pool does not meet the required 15' set back. The only other option is to move the pool, which would be a severe hardship as well as a very costly resolve. At the end of the day, placing the swimming pool too close to the property line was an error that someone other than the Wus made. In addition, this project has already been quite costly. A request was made to the Building Department to issue the Certificate of Occupancy for the swimming pool, which was denied in writing by the Building Inspector on October 25, 2022. The culmination of this swimming pool project cannot happen, until the

Zoning Board of Appeals hears the variance application. There has been a lapse in time throughout this process as it was the hope of Mr. Tota that the two neighbors could resolve this issue mutually amongst themselves.

Whitney Singleton, attorney for the Wu's neighbors submitted a document very late in the day today. In his opinion, the Notice of Violation was not appealed in a timely fashion. He noted even the minutes of the Board indicate it was untimely and the applications are the same as the Wu's are seeking the same relief. In addition, the permit for the swimming pool is expired, so how can an application be heard on an expired permit. Mr. Lansky noted that in his opinion, since the June 2022 application was withdrawn and this is now a new determination. In Mr. Singleton's opinion, the Zoning Board of Appeals has no authority to hear this new application, and the Wu's promised they would not submit a new application. All parties wanted an agreement to be worked out and settled. Mr. Singleton added that the clock cannot be restarted at this point.

Mr. Caruso stated that the application of December 23, 2022 was not withdrawn, but simply amended to including the results of engineering reports done and resubmitted in February. The June 2022 application was withdrawn and is now null and void. In addition, for the record, the permit issued for the swimming pool has been renewed. Mr. Caruso also stated that Building Inspector Tom Tooma did not reject submitting the application to the Zoning Board.

Any Stanciu of 4 Silver Springs Court addressed the Board. She noted the letter her attorney presented today and wants the Board to know in her opinion the hardship she and her husband have experienced as a result of their neighbor's antics. Over the last two years, they have spent thousands of dollars as a result of damage done by the Wu's to their retaining wall, fence, underground pipes, driveway and trees. In her opinion they knew exactly what they were doing and took advantage of the fact that prior to them buying the property it had been vacant for over a year. When the encroachments came to light, they were hopeful that the Wu's would take care of the issues, but they started to argue. As a result, lawyers got involved, resulting in a lot of money being spent in an attempt to resolve the issues. Mrs. Stanciu asked how the Board members how they would feel if their neighbor was doing something like this to them. She concurs with her attorney that the applications are the same.

Deborah Wu of 8 Silver Springs Court addressed the Board. In her opinion, the application of June 2022 submitted on their behalf by Mr. Tota was dismissed and not applicable at this time. She has been trying with difficulty to resolve the court settlement with the Stanciu's. In closing, in her opinion, her current attorney Mike Caruso submitted the December 23, 2022 application on their behalf, replaced it with an amended application in February, with the only difference being the inclusion of engineer reports. The application is timely and should be heard.

James Nekos of 42 Fieldstone Drive addressed the Board. He is highly doubtful knowing the type of people the Wu's are that they would ever take advantage of causing

this situation during the time that the Stanciu's property was vacant. They are and have been good neighbors.

Mr. Cannistra feels that at this point, the Board has heard enough from both attorneys regarding this application and the members need to determine whether this application is timely and materially different. A discussion ensued amongst the members and a vote was taken.

Mr. Harden made a motion to hear the application because it is timely. 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
Chairman Cannistra	Aye

Mr. Lansky made a motion to hear the application because it is materially different. 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	Aye
Mr. Harden	Nay
Mr. Lansky	Aye
Mr. Newman	Nay
Chairman Cannistra	Aye

All six Board members present agreed to seek legal counsel as to whether this 3 - 3 tie vote acts as a denial or a non-action.

In the meantime, Chairman Cannistra repeated to the applicants that settling this matter between themselves is really the best way to handle this situation.

The application is postponed until further notice.

**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 March 28, 2023 meeting were approved as submitted.

The next monthly meeting of the Zoning Board of Appeals will be held on May 16, 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