

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

June 13, 2023
MEETING AT 7:30 PM

1. **JOSEPH AND JENNIFER WITTMANN** **2023:ZB16**
An application to renew a Special Exception Use Permit as a new owner for an existing accessory apartment above a garage attached to the existing dwelling of a one family dwelling in an R-80 Residential District at **9 Dr. Tony's Road, Katonah**. The property is shown on the Town Tax Map as **Section: 37.15, Block: 1, Lot: 29**. RE: Section Schedule: 170-70.

2. **UB SOMERS, INC.** **2023:ZB17**
An application for a height variance for a new business (Tractor Supply) sign in a Community Shopping District at **80 Route 6, Baldwin Place**. The property is shown on the Town Tax Map as **Section: 4.20, Block: 1, Lot: 11.6**. RE: Section Schedule: 170-126.

3. **VICTOR AND DEBORAH WU** **2023:ZB04**
A rehearing of an application for a side yard area variance for an existing inground pool accessory in an R-80 Residential District at **8 Silver Springs Court, Katonah**. The property is shown on the Town Tax Map as **Section: 58.12, Block: 1, Lot: 10**. RE:

Section Schedule: 170:A1 Zoning Schedule
Part 1.

4. **39 Cypress Lane, LLC**

**2022:ZB33 (CARRYOVER)
(POSTPONED)**

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

1. **OTHER BUSINESS**

May 16, 2023 Meeting Minutes

Next Meeting – July 18, 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
Joseph and Jennifer Wittmann

B Z NUMBER *2023:ZB16*
DATE: *4/24/23*

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

1. *Joseph and Jennifer Wittmann*
(Name of appellant)

whose post office address is *9 Dr. Tony's Road, 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 of an existing accessory
apartment in an R-80 Zone.
The apartment is above the garage
attached to the house*

3. The property which is the subject of the appeal is located at or known as
9 Dr. Tony's Road and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: *37.15* Block: *1* Lot: *29*

The interest of the appellant is that of *owners*
(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

9 Dr. Tony's Road

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

A Special Exception Use Permit is required in order to have an accessory apartment

and such may be granted pursuant to 170-70

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

THERESA GIANNONE
NOTARY PUBLIC-STATE OF NEW YORK

No. 01G14888784

Qualified in Dutchess County

My Commission Expires 04-06-2023
2026

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 24 DAY APRIL 20 23

Theresa Giannone
NOTARY SIGNATURE

Joseph V.B. Withman, III
OWNER SIGNATURE

NOTARY SIGNATURE

APPLICANT SIGNATURE



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
UB Somers, Inc.

B Z NUMBER 2023:ZB17
DATE: 5/25/23

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

1. Willing Biddle
(Name of appellant)

whose post office address is 321 Railroad Avenue, Greenwich, CT
(Post office address) 06830

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 Architectural Review
(Name of officer)

Board, made on April 27 2023
(Office held)

which ruling was filed on and notice of such ruling was
first received by appellant on

(Give summary of ruling)

An application for a height variance
for a new business sign for Tractor
Supply in a Community Shopping
District

3. The property which is the subject of the appeal is located at or known as

80 Route 6 and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: 4.20, Block: 1, Lot: 11.6

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 Route 6

(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, the maximum height allowance of a sign for the Community Shopping District is 2' - Relief Sought - 2'4 1/2"

and such may be granted pursuant to 170-126

(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 3rd DAY May 20 23

Isabel Daly
NOTARY SIGNATURE

William L. Biddle
OWNER SIGNATURE

ISABEL DALY
Notary Public, State of Connecticut
My Commission Expires Apr. 30, 2025

NOTARY SIGNATURE

APPLICANT SIGNATURE



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

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

Rehearing

B Z NUMBER *2023: ZB 04*

DATE: *January 31, 2023*

IN THE MATTER OF THE APPEAL
OF
Victor Wu + Deborah Wu

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

1. *Victor Wu + Deborah Wu*
(Name of appellant)

whose post office address is *8 Silver Springs Ct., Katonah, NY 10536*
(Post office address)

through *Cuddy + Feder LLP*
(Name of attorney or representative if any)

whose post office address is *445 Hamden Ave., 14th Fl., White Plains, NY 10601*
(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 *Thomas J. Tolson, Jr.*
(Name of officer)

Building Inspector
(Office held), made on *10/25/2022*

which ruling was filed on *10/25/2022* and notice of such ruling was
first received by appellant on *10/25/2022*; such ruling

(Give summary of ruling)
*Denied certificate of occupancy for swimming pool
not compliant with side yard set back - minimum
15' required.*

3. The property which is the subject of the appeal is located at or known as *8 Silver
Springs Ct., Katonah, NY 10536* and is shown on the
(Street and number or distance from and names of nearest intersecting streets)

Town Tax Map as Section: *58-2*, Block: *1* Lot: *10*

The interest of the appellant is that of *owners*
(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

8 Silver Springs Ct., Katonah, NY 10536

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

see attached

and such may be granted pursuant to Code §§ 170-110 & 170-111

(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 31st DAY January 20 23

NOTARY SIGNATURE

OWNER SIGNATURE

Judy Coppola
NOTARY SIGNATURE
JUDY COPPOLA
Notary Public, State of New York
No. 01CO6333765
Qualified in Westchester County
Commission Expires November 30, 2023

Michael V. Coruso of Cuddy + Feder LLP,
as attorneys for owners & applicants.

(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
May 16, 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, Mr. Guyot, Mr. Harden, Mr. Newman, and Mr. Padovani.

Ms. D'Ippolito and Mr. Lansky joined the meeting via Zoom due to extraordinary circumstances.

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

APPLICANTS

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.

Al Totten addressed the Board. One person lives in the apartment. 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
Mr. Padovani	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
Mr. Padovani	Aye
Chairman Cannistra	Aye

GLENN ALBRIGHT - 2023:ZB14 – 58.12-1-5

An application to renew a Special Exception Use Permit for an existing accessory apartment in a detached accessory of an existing one family dwelling in an R-80 Residential District at 9 Route 100, Somers. The property is on the Town Tax Map as Section: 58.12, Block: 1, Lot: 5. RE: Section Schedule 170-70.

Glenn Albright addressed the Board. One person lives in the apartment. Building Inspector Tom Tooma inspected the apartment on April 19, no changes have been made and it is identical to the plan on file. There have been no complaints or issues.

Mr. Padovani made a motion for a Type II action. 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

Mr. Harden made a motion to approve the Special Exception Use Permit for an accessory apartment in a detached accessory 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
Mr. Padovani Aye
Chairman Cannistra Aye

JONATHAN AND MELISSA CHIOTIS AND ESMERELDA TAMEZ - 2023:ZB15 – 17.09-2-16

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 56 Wilner Road, Somers. The property is on the Town Tax Map as Section: 17.09, Block: 2, Lot: 16. RE: Section Schedule 170-70.

Melissa Chiotis addressed the Board. Her mother lives in the apartment. Building Inspector Tom Tooma inspected the apartment on April 19, 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
Mr. Padovani Aye
Chairman Cannistra Aye

Mr. Guyot 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. 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

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.

This evening, Mr. Cannistra announced that Town Attorney Gerry Reilly responded to the request in writing. In his opinion, it is a denial, not a non-action and the Board has the discretion to amend the vote any time before June 19, 2023 and revote, a unanimous vote is not required.

It was also noted that a letter was received via email from Whitney Singleton this afternoon.

Mr. Caruso addressed the Board. He said the Board is certainly well versed in the issues and in his opinion the application is for an area variance based on the letter from Building Inspector Tom Tooma of October 25, 2022.

Mr. Singleton addressed the Board. While he agrees with Mr. Reilly's assessment of the law, in his opinion, the cited statutory is expressly limited to a motion or resolution to grant a variance and therefore is not applicable to the Board's subject vote.

A discussion ensued amongst the Board. Mr. Lansky feels that the Board didn't vote on a variance, therefore he would like to rehear the application, with the understanding that only new materials may be submitted.

Ms. D'Ippolito is of the opinion that the 3 to 3 vote was a denial.

Mr. Padovani is in favor of a revote.

Mr. Guyot would like to rehear the application, but reiterated that only new materials should be submitted.

Mr. Newman feels that as per Mr. Reilly's comments, the Board should decide whether it was a variance vote and if yes, the tie vote was a denial. If not, there should not be a revote, but the application should be re-noticed and the application reheard on June 13th.

Mr. Singleton questioned whether the two members who are in the meeting via Zoom could in fact vote. Mrs. Schirmer responded that she was told they could not count toward a quorum, but could vote.

Mr. Caruso stated that the vote was part in parcel to the overall request for a variance.

Ms. D'Ippolito said the Board has to delineate if the vote was a variance vote. With that in mind. A motion was made by Ms. D'Ippolito that the vote taken on April 18, 2023 was a variance vote and therefore it should not be amended and revoted on. 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	Nay
Mr. Lansky	Nay
Mr. Newman	Aye
Mr. Padovani	Nay
Chairman Cannistra	Nay

The motion was denied.

Mr. Lansky made a motion that it was not a variance vote, but a non-action and the application should be reheard. Mr. Harden 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	Aye
Mr. Lansky	Aye
Mr. Newman	Nay
Mr. Padovani	Aye
Chairman Cannistra	Aye

The application will be reheard on June 13, 2023, with the understanding that only new hard copy materials may be submitted to Mrs. Schirmer per her deadline date for the meeting.

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 April 18, 2023 meeting were approved as submitted.

The next monthly meeting of the Zoning Board of Appeals will be held on June 13, 2023 at 7:30 p.m. With there being no further business, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board

DRAFT