

(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. 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 to 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