

(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

June 13, 2023

The meeting was called to order by Chairman Cannistra at 7:40 p.m. with the Pledge of Allegiance.

The members present were: Mr. Cannistra, Mr. Guyot, Mr. Harden, Mr. Lansky, Mr. Newman, and Mr. Padovani.

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

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

APPLICANTS

JOSEPH AND JENNIFER WITTMANN - 2023:ZB16 – 37.15-1-29

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

Joseph and Jennifer Wittman addressed the Board. The apartment is vacant. Building Inspector Tom Tooma inspected the apartment on May 26th, no changes have been made and it is identical to the plan on file. There have been no complaints or issues.

Mr. Harden 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. Guyot made a motion to approve the Special Exception Use Permit for an accessory apartment above an existing garage attached to 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

The Special Exception Use Permit was approved.

UB SOMERS, INC. - 2023:ZB17 – 4.20-1-11.6

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

Matt Kusewicz addressed the Board. He met with the Architectural Review Board at their meeting on April 27, 2023 to discuss a proposed sign for Tractor Supply located at 80 Route 6. The height of the sign is 4’ – 4 1/2” high by 16’ – 6 3/8” long. The Tractor Supply logo is at the beginning of the sign followed by Tractor on the top line and Supply on the second line in black lettering on a white background.

Although the Board did not object to the design and colors of the sign proposed, they could not approve the sign as it is 2’ higher than what is allowable as per the Code of the Town of Somers. The Board does however understand the need for the height variance and agreed the area on the façade of the building where it will be placed can absolutely accommodate it.

A memo in support of this application was submitted to the Zoning Board members and read aloud by Chairman Cannistra.

Mr. Harden 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. Guyot made a motion to approve a 2' height variance for a new business sign for Tractor Supply. 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

The Variance was approved.

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

A rehearing of 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.

A decision was made at the May 16, 2023 by a 5 to 2 vote to rehear this application with the understanding that only new information will be accepted by the Wu's attorney, Mike Caruso or the neighbor's attorney, Whitney Singleton.

Chairman Cannistra reminded everyone that the Board has already heard extensive testimony and has received substantial materials. Key points to date are the timeliness

of the application; whether it is materially different than what was submitted prior; and whether the Board has jurisdiction over the application. If yes, then a decision can be made to vote on the merits of the application regarding the variance request.

Mr. Caruso did not submit any new information, but was asked to summarize the application. Prior to doing so, he wanted the Board to know that an Article 78 has been filed regarding the April 18, 2023 action and vote by the Board.

The summary is as follows:

In 2021 a violation was issued to the Wus. Their inground pool was too close to the property line and part of their pool barrier on the neighbor's property. The violation ended up in Town Court, and on October 31st they were given a year to remove the encroachments on their neighbor's property. The only thing left to do is to remove the cut fence posts still in the ground. Four attempts have been made for the Wus to go onto their neighbor's property to do so without a response. At that time, the Town Court resolved the violation regarding the encroachments. Mr. Cannistra noted that he spoke earlier today to Town attorney Gerry Reilly to get confirmation of the same.

In the meantime, also in 2021, attorney Dan Tota submitted an application to the Zoning Board seeking a side yard setback variance for the pool. Mr. Tota withdrew the application.

A request was made of Building Inspector Tom Tooma to issue a Certificate of Occupancy for the pool, which was denied in writing on October 25, 2022.

On December 23, 2022, attorney Mike Caruso submitted an application to the Zoning Board on behalf of the Wus, seeking a variance for the side yard setback for the pool. Before the Board heard the application, it was amended in February 2023 to include engineering schematics in the supporting documentation.

In closing, Mr. Caruso commented that votes have taken place on the timeliness of the application and it was determined it was timely, as well as whether the current application was materially different from the application submitted by Mr. Tota, which ended in a tie vote with only six members present that evening. In his opinion, that application was withdrawn, therefore it and the vote are null and void. Mr. Caruso would like the Board to consider the merits of the variance and take a vote this evening.

Chairman Cannistra asked the neighbor's attorney, Whitney Singleton, if he had any comments to make.

In Mr. Singleton's opinion, the current application before the Board is untimely and as per the Code of the Town of Somers (Chapter 67-5) the Zoning Board has no jurisdiction to hear the application as the violation of the inground pool being too close to the property line still exists, even if there is a conditional discharge. In addition, the application should have included a notification of the violation and it did not. In his

opinion, the Building and Planning and Engineering Departments should not have let this situation happen. It should have been discovered when they started digging for the pool that there was an issue. He went on to say that if the Board votes in favor of issuing a variance, he will sue the Town. In his opinion, the Town should be protecting his clients as a result of all that has been done to them. He also felt that in particular, Mr. Lansky is being biased about this application. Mr. Lansky agreed he is, but wants to hear the application in full and not just jurisdictionally.

Mr. Caruso rebutted that the Board can waive the conditions of Chapter 67-5. Mr. Singleton said that is incorrect because they can't have jurisdiction. Mr. Caruso feels as though the Board is well versed and capable of making a decision. He shared an aerial view of the property with the Board indicating where the pool is compared to having to have it moved 12' if a variance is not granted.

Further comments were made by the Board:

Mr. Harden opined that the bottom line is that the pool has not moved.

Mr. Lansky reminded everyone that they voted unanimously that the application was timely; the vote on being materially different was a tie vote and the very first application for a variance was withdrawn, therefore it is null and void and shouldn't be part of the discussion any longer. In his opinion, they Board has the right to vote again on whether the application is materially different. Mr. Cannistra commented that since the very first application was withdrawn, they have nothing to compare the current application to.

Mr. Cannistra reminded everyone that an opinion can be sought from legal counsel. Mr. Caruso said that he feels confident that the Board knows what to do. He said in order for the application to be materially different, something has to factually transpire between two different events, which did not happen, therefore the application can be heard.

Mr. Singleton highly recommends that the Board seek legal counsel, as once again in his opinion, the Board cannot hear the application, which is all about a side yard variance for the pool, not the encroachments on the neighbor's property.

The applicant Deborah Wu addressed the Board. Since they were issued the violation for the pool being too close to the property line and part of the fence being on the neighbor's property, they have done a lot of work on their property to resolve the encroachment. In her opinion, a lot of misinformation has been given to the Board about her and her husband and she would very much appreciate if the Board would listen to the entire situation from both parties, and not just one side.

The neighbor, Panta Stanciu addressed the Board. He said that in May there was a lot of rain and water is coming from the Wus property and flooding his. In his opinion, it is all due to the Wu's pool. He also thinks the Town is at fault regarding this situation.

Mr. Lansky made a motion that the application is materially different and the application should be heard. Mr. Cannistra seconded the motion.

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

POLL OF THE BOARD

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

The variance application will not be heard.

Mr. Singleton thanked the Board for their time and consideration. He also apologized for his temperament, which is due to his compassion for what he does.

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 May 16, 2023 meeting were approved as submitted.

The next monthly meeting of the Zoning Board of Appeals will be held on July 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