

TOWN OF WALLKILL  
ZONING BOARD OF APPEALS

March 9, 2009

PRESENT:

Mr. K. Dunn  
Mr. E. Johnson  
Ms S. Najac  
Ms M. Petelinz  
Ms E. Raffo, Chairperson  
Ms Sullivan  
Mr. S. Wilson

J. Owen, Esq.

MEETING OPENING:

Ms Raffo: The meeting was opened with the pledge to the flag, roll call and presentation of the February 9, 2009 Meeting Minutes.

Ms Raffo: I Move to accept the February 9, 2009 Minutes as written; Seconded (Wilson); All in favor; Motion carried.

The following Continuances, Public Hearings and Reviews (April 13, 2009) were conducted and voted upon as noted.

**CORRESPONDENCE:**

**Six Month Extensions:**

**Brian Rivenburgh (16-1-8)**

Ms Raffo: We have a request for a six month extension on the application as they are awaiting for response from the board of health for the septic.

Ms Raffo: I Move to grant a six month extension for Brian Rivenburgh originally granted in February 2008 and scheduled to expire April 13, 2009: Request for a variance of 249-20(d)(1): 1) Rear yard from 50ft to 30ft; 2) Area from 1.5 acres to 0.36 acres; 3) Lot width from 200ft to 106ft; 4) Lot depth from 250ft to 150ft; Property located at Hickory Place / Maple Drive (16-1-8); Designated R-2; Seconded (Johnson); All in favor; Motion carried.

**Fairways Wallkill, LLC, C/O GDC**

Ms Raffo: This is an on-going project and they continue to work diligently on the project and are requesting a six month extension.

Ms Raffo: I move to grant Fairways Wallkill, LLC, C/O GDC a six month extension on variances due to expire April 13, 2009; Seconded (Wilson); All in favor; Motion carried.

**Thomas J. Dembek (73-1-3)**

Ms Raffo: The Dembeks are requesting a six month extension as they improved the water/sewer and are working with O&R.

Ms Raffo: I Move to grant a six month extension on variances granted on March 10, 2008 and due to expire on April 13, 2009: Request for a variance of 249-22(D)(1): 1) side yard from 20ft to 11ft; 2) 2 side yards from 40 to 22ft; 3) lot frontage from 100ft to 50ft; 4) lot width from 100ft to 50ft; To build a new home after removing existing house. Property located at 191 Schutt Road (73-1-3) and Designated R-1; Seconded (Wilson); All in favor; Motion carried.

**Wall-Mart Stores, Inc. (Snyder & Snyder, LLP)**

Ms Raffo: Wall-Mart Stores are requesting an extension for their project on Galleria Drive.

Ms Raffo: I Move to grant a six month extensions for variances granted 9/05: 1) Variance of 249-8-A(5) of primary building) – (accessory building in front for installation of the filling station pumps. Property located at 300 North Galleria Drive (SEC 78 BL 2 LOT 5.12); Designated MI; Seconded (Johnson); All in favor; Motion carried.

CONTINUED PUBLIC HEARING:

VENDA PROPERTIES	Request for a use variance (mine, sand and gravel) Property located on Goshen Turnpike (60-1-68.13) Designated OR
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Ms Raffo: The Venda application has been a continued hearing for six months while they were working with various offices. In fairness they need to reapply because of time element.

J. Owen, Esq.: You can remove it from the agenda and notify them by mail that it is necessary for them to reapply, be reviewed and be scheduled for a public hearing date.

Ms Raffo: The Zoning Board will notify the applicants by mail.

PUBLIC HEARINGS:

Joseph Fini

Request for variances of (249-(E)-(1):  
1. area from 5.0 acres to 3.83 acres  
2. lot frontage from 200ft to 135.91 ft  
Property located at Stage and Stony Ford Roads  
(61-1-44)  
Designated RA-1.

Ms Raffo: The mailings were reviewed by the Board and filed for the record. The Public Hearing notice was read at 7:45 pm.

Ms Raffo: I Move to open the Public Hearing at 7:46 pm.

Dan Yanosh: This is 7.67 parcel of land with frontage on 2 roads: Stage / Stony Ford. A piece was taken off previously to make another piece conform. If that was not done the request would be different. It is difficult to build on 5 acres. He built the Canaliza house. I have given you the arial view of the sites with the small houses and the small lots over there. The existing 6 acre lot was cut off in 1978.

Part of the variance is for frontage and width on Stony Ford and need 200 feet right along through there.

Ms Raffo: Any questions from the Public?

Nick Bagg, Stage Road: What is he planning before anything begins? (D. Yanosh showed him the layout).

Nick Bagg: Where is the driveway? How big?

D. Yanosh: 3.8 and 3.83 acres.

Nick Bagg: Did he own it before zoning?

D. Yanosh: He had eye on it and lot track when the zoning was change. May 2000. He knew it a long time ago and knew about the sub division and did not realize the zoning change.

Mr. Wilson: He did know?

D. Yanosh: Yes.

Frank Calano (Public): I wanted to see what the plans are. His driveway is 10 feet from the property line not a lot of room?

D. Yanosh: He lives on Stage Road and wants to know that the driveway is 10 feet from the property line. That is something McGoey does with every sub division. And we have enough room to swing driveway in there.

Frank Calano (Public): This house here and the tree line?

D. Yanosh: Yes.

Frank Calano: As long as the driveway is not on top of me I don't care.

Ms Raffo: Any questions from the Board? (No)

Ms Raffo: He has 3.8 acre and needs 8; he has 7.

Mr. Wilson: I have reservations on voting on the application because you have several other lots. Was the corner was sub divided before zoning change?

D. Yanosh: New zoning would have been Catalino.

Mr. Wilson: We changed zoning for a reason. I do have severe reservations about the application.

D. Yanosh: No soils because of frozen ground. Gravel bank on the farms, so should be no problems with septic and perks. We are not getting into town water/sewer. Minor impact on the neighborhood. We have good site distances on the road.

Mr. Dunn: There are no problems with the septic by the Federal wetlands?

D. Yanosh: No, we can test them out to prove it out. It has to be done for Planning (Board).

Ms Sullivan: The Town has a plan for 5 acres and it took a long time to develop that plan.

Mr. Yanosh: In this economy it has slowed down quite a bit. To buy a 5 acres no one can afford that for a while. It is open fields and there will be 5 acre lots. 5 acres in the woods is nice, but with the economy no one will be putting up mansions out there.

Ms Raffo: It was bought and the zoning has been in effect for a few years. You said he did not realize, but he just bought this and knew he needed a variance.

Ms Sullivan: People in 2005 and 2006 who claim they did not know. That is not an excuse. Here bought it in 2008 a couple of months ago.

Ms Raffo: Any further questions? (no)

Ms Raffo: I Move to close the Public Hearing at 7:55pm; Seconded; All in favor; Motion carried.

Ms Raffo: I Move to grant the following: 1) area variance from 5 acres to 3.83 acres; 2) lot frontage from 200ft to 135.91ft; Seconded.

DISCUSSION:

Ms Najac: This is a substantial request.

Mr. Dunn: I have concerns with it being right off the Federal wetlands.

Mr. Wilson: This is an undesirable change to the neighborhood and the majority of the lots in the area are very large and substantial.

Mr. Johnson: Return can be achieved by other means and it is a major change to the neighborhood. You are requesting a reduction from 200 to 136 on the frontage and that is sizeable. Also the lot size from 6 acres to 3.8 acres; it is self created.

Ms Petelinz: I agree with Mr. Johnson's comments.

Ms Sullivan: To repeat what Mr. Johnson said, and it is substantial.

Ms Raffo: According to the current codes, it is a 1.5 lot and more than half is wet lands. It was bought in 2008.

VOTE:

In favor (aye) 0

Opposed (nay) 7 Najac, Dunn, Wilson, Johnson, Petelinz, Sullivan, Raffo

DECISION:

Ms Raffo: The variance is denied.

MPO Federal Credit Union

Request for a variance of 249-26(E):

1. front yard from 35ft to 22.8 ft

Property located at 15 Carpenter Avenue  
(74-10-4, 5, 6, 7 and 8)

Designated: HC

Ms Raffo: The mailings were reviewed by the Board and filed for the record.

Ms Raffo: I Move to open the Public Hearing at 8:00 pm.

Kevin Duggan, Fellenzer Engineering: We have here the application for the credit union who purchased the property corner of Carpenter Avenue and East Main Street. It is a one-story yellow house and the former Hassens Supply. They want to tear down Hassens and put an addition on the one-story house to build their bank for that location. On the drawings - Page 1 is actual layout as property sits today and hashed where Hassens will be removed, where the garage for 1 story house removed. Second page show proposed layout and parking. As part of new building existing is a non-conforming use and if you see the gray is outline of existing building. As you put addition the building extended to West in non-conforming area - 60 sq/ft and increasing the non-conformance. We are here for small area variance. While we not increase to the road, still non-conformance area and variance for 60 sq/ft.

Ms Raffo: You are telling us you will take down Hassens - what here? (looking at drawings)

Mr. Duggan: The parking lot. (looked at the drawing)

Ms Raffo: It is not the same lot.

Mr. Duggan: We are in front of the Planning Board and lot line change and recombination. They call it a sub division still. There are 5 lots all together.

Mr. Wilson: You are looking for difference of 13 feet.

Mr. Duggan: Yes, not getting closer to building so that distance is not changing.

Ms Raffo: Any questions from the Public? (No)

Ms Raffo: I Move to close the Public Hearing at 8:04 pm; Seconded; All in favor; Motion carried.

Ms Raffo: I Move to grant the following front yard variance from 35ft to 22.8 ft; Seconded (Wilson).

DISCUSSION: (None)

VOTE:

In favor (aye) 7      Johnson, Petelinz, Sullivan, Najac, Dunn, Wilson, Raffo  
Opposed (nay) 0

DECISION:

Ms Raffo: The variance is granted, please see the Building Department.

Transparently Green  
(Matthew Bates)

Request for a variance of (249):  
1. side yard from 20ft to 1.8ft  
Property located at 100 Excelsior Avenue  
(75-12-7)  
Designated R-1.

Ms Raffo: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 8:05 pm.

Ms Raffo: I Move to open the Public Hearing was opened at 8:06 pm.

Mr. Wilson: Did you get us the map information?

Applicant: Yes. I have a little over 85. We want to extend the back and it is the same foot print but the back foundation was on blocks and want to put in a real one.

Ms Raffo: You have 95 in the back? You need a side yard.

Ms Raffo: Any questions from the Public? (no)

Ms Raffo: Do you have a neighbor next door with a house?

Applicant: Yes. They just really want the house fixed up.

Ms Raffo: I Move to close the Public Hearing at 8:09 pm; Seconded; All in favor; Motion carried.

Ms Raffo: I Move to grant the following variance: side yard set back from 20ft to 1.8ft; Seconded.

#### DISCUSSION:

Mr. Wilson: This is pre-existing.

Ms Petelinz: It is existing and there were not comments from the neighbors or the public.

Ms Raffo: It is an improvement.

#### VOTE:

In favor (aye) 7      Najac, Dunn, Wilson, Johnson, Petelinz, Sullivan, Raffo  
Opposed (nay) 0

#### DECISION:

Ms Raffo: The variance is granted, please see the Building Department.

James Beamesderfer

Request for a variance of (249):  
1. use variance for 2 residence on 1 lot  
Property located at 48 Shaw Road  
(24-1-53.2)  
Designated R-2

Ms Raffo: The mailings were reviewed by the Board and filed for the Record. The Public Hearing Notice was read at 8:10 pm.

Ms Raffo: I Move to open the Public Hearing at 8:11 pm.

James Beamesderfer: The land is zoned PID formerly and many years ago my wife's grand father had a mink ranch and had a retail shop there. The house on the map - 1 story - is building model mink business retail store. It was re-zoned R2 couple of years ago and m ink ranch closed down and it operated until a couple of years ago. 2 years ago the retail closed down and wife grand mother died and grand children inherited house and buildings on the drawings. So what the current owner, my wife and siblings, want to do is use house as a house and what to use former retail shop for. Obviously retail shop again and outside pre-existing use for more 12 months and don't want to use it for that as have no need but have it as one or two bedroom apartment and consistent with residential area and not add to traffic or congestion. We looked at options of permitted uses - all buildings on drawing been there for years. No other use that parking would allow since it is residential - use variance formerly retail store as an apartment.

Ms Raffo: It has been closed for how long?

Mr. Beamesderfer: Approximately 2 years.

Ms Raffo: How big 4.8 acres.

Mr. Beamesderfer: It is not conducive for sub diving. 4.4 acres not room for frontage or septic. In the Fall we looked at septic for house and apartment and prelim indications are we can. Put on hold for frozen ground and wanted to see if get apartment first. We have horse farm down the road.

Ms Raffo: Any questions from the Public? (No)

Ms Raffo: Any questions from the Board?

Mr. Wilson: It is difficult to get use variance passed and under certain circumstance unnecessary hardship when doing something. You want it for income source.

Mr. Beamesderfer: Right now it essence it is shed type building. It is build as a store or house built. Under using it as a shed. An apartment for some one who needed it.

Mr. Johnson From that standpoint if you look at a house with 3 barns bought that and don't have cows and have barns and what to do with them – common in the Town of Wallkill and wanted to convert to rental units becomes difficult. It would be bad down the road. There are 2 farms down the road. You have to understand a use variance is hard to obtain because of setting precedence.

Mr. Beamesderfer: The difference is we did not purchase it and want to use it for new use. We try to reinstate the use and look of the property today. It will fall into disrepair if not taken care of and not add to value of the property but not get use out of it.

Ms Raffo: We have to look at the Code and what guidelines are: substantial hardship. This has been closed for years and not losing anything without the variance. You then have, if permitted, 2 residences on one piece which is against the code. If it was sub divided you would not have enough property for the residence. That is a lot of variance.

Ms Sullivan: You would not have enough property to put on another house which is essentially what you are doing. It falls back to zoning. I don't see substantial hardship.

Ms Najac: I agree.

Ms Raffo: I Move to close the Public Hearing at 8:21 pm; Seconded (Johnson); All in favor; Motion carried.

Ms Raffo: I move to grant the following use variance for two apartments; Seconded.

#### DISCUSSION:

Mr. Johnson: When look at reasons – reasonable return you could use shop for other outbuilding. I would have. Hardship – 2 living spaces on one lot and it is really self created and nothing you can change.

Ms Petelinz: The members have made their comments, and I agree.

Ms Sullivan: For the same reasons as stated, I'll have to vote no.

Ms Najac: You have failed to show substantial hardship.

Mr. Dunn: I'll vote no for the reasons stated.

Mr. Wilson: You have not demonstrated unnecessary hardship – it will change the character of the neighborhood.

Ms Raffo: This is not unique and places where you have out buildings, not financial hardship.

VOTE:

In favor (aye) 0

Opposed (nay) 7      Johnson, Petelinz, Sullivan, Najac, Dunn, Wilson, Raffo

DECISION:

Ms Raffo: The variance request is denied.

HEARING REVIEWS:

Jan Witte

Request for an oversized accessory (garage) to 24 x 36ft.

Ms Raffo: You want to put in an oversized garage and build a house.

Garys Woodworks: In June 2005 got building permit # 17397 and paid for it and started construction 6/05.

Mr. Wilson: 24 x 36ft garage.

Garys Woodworks: The largest is 28x28. we needed a variance. I got a permit without a variance from Don Kimball.

We got a permit and the electrical work was done and paneling to finish it and insulate. When we talked about the house project, we were aware got a CO no question, and the town engineer did a report and then come here and get variance for garage variance.

Now there is an old trailer on the lot – he would like to take the trailer down, got septic design made up, put up a new house almost over it. We meet setbacks with the house.

Ms Raffo: This is in R-2.

Mr. Wilson: It needs area and oversized garage, he has front and sides.

Mr. Witte: I want to build it to live in it.

Ms Raffo: The area is 1.5 required and he .97. IT is important to stay within the setbacks including the porch.

Ms Raffo: This is for the following variance: 1) area from 1.5 to .97 for new construction, and 2) accessory from 28x28 that is 24x36ft.

Ms Petelinz: What will you use the garage for?

Garys Woodworking: For cars and storage and it has an up-stairs to it.

Ms Raffo: I Move to hold a Public Hearing on April 13, 2009 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Ms Raffo: It is necessary to notify everyone within 1000 feet of your property. You can obtain the list of names from the Town Tax Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the week. Take that notice, copy it and mail it to everyone on the list at least 15 days prior to your scheduled Public Hearing date. Mailings must be sent either by certified or registered mail. Bring your proof of mailings with you to your Public Hearing. The Public Hearing will not be opened without your proof of mailings.

**MEETING CLOSE:**

Ms Raffo: There being no further items to be presented before the Board, I Move to close the Meeting at 8:31 pm; Seconded; All in favor; Motion carried.

Publication on March 11, 12, or 13

TOWN OF WALLKILL  
ZONING BOARD OF APPEALS  
PUBLIC HEARING NOTICE

Notice is hereby given that a Public Hearing of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York will be held at the Town Hall, 99 Tower Drive – Building A, Middletown, New York on the 13<sup>th</sup> day of April, 2009, at 7:30 pm or as soon thereafter as the matter can be heard on the application of:

Jan Witte, Four Fawn Hill Road, Chester, New York 10918 for a variance of 249-3 (accessory building) for the property of Jan Witte, Four Fawn Hill Road, Chester, New York 10918. Property (13-1-14) located at 614 Van Burenville Road, Middletown, New York 10941 and Designated R-2.

All parties of interest will be heard at the said time and place.

E. Raffo  
Zoning Board of Appeals

TOWN OF WALLKILL ZONING BOARD OF APPEAL  
DECISION SHEET

MARCH 9, 2009

Joseph Fini

Request for an area variance (249-(E)-(1):  
1. area from 5.0 acres to 3.83 acres  
2. lot frontage from 200ft to 135.91 ft  
Property located at Stage and Stony Ford Roads  
(61-1-44)  
Designated RA-1

DECISION: Variances denied

MPO Federal Credit Union

Request for a variance of 249-26(E):  
1. front yard from 35ft to 22.8 ft  
Property located at 15 Carpenter Avenue  
(74-10-4, 5, 6, 7 and 8)  
Designated: HC

DECISION: Variance granted

Transparently Green  
(Matthew Bates)

Request for a variance of (249):  
1. side yard from 20ft to 1.8ft  
Property located at 100 Excelsior Avenue  
(75-12-7)  
Designated R-1.

DECISION: Variance granted

James Beamesderfer

Request for a variance of (249):  
1. use variance for 2 residence on 1 lot  
Property located at 48 Shaw Road  
(24-1-53.2)  
Designated R-2

DECISION: Variance denied

SIX MONTH EXTENSIONS:

Brian Rivenburgh

Request for a six month extension on  
A variance of 249-20(d)(1):

- 1) Rear yard from 50ft to 30ft;
- 2) Area from 1.5 acres to 0.36 acres;
- 3) Lot width from 200ft to 106ft;
- 4) Lot depth from 250ft to 150ft;

Property located at Hickory Place / Maple Drive  
(16-1-8)

Designated R-2

DECISION: Six month extension granted

Thomas J. Dembek

Request for a six month extension on:

Request for a variance of 249-22(D)(1):

- 1) side yard from 20ft to 11ft;
- 2) 2 side yards from 40 to 22ft;
- 3) lot frontage from 100ft to 50ft;
- 4) lot width from 100ft to 50ft;

To build a new home after removing existing  
house. Property located at 191 Schutt Road  
(73-1-3)

Designated R-1

DECISION: Six month extension granted

Wall-Mart Stores, Inc.  
(Snyder & Snyder, LLP)

Request for a six month extension for:

Variance of 249-8-A(5) of primary building) –

1. accessory building in front for installation of  
the filling station pumps.

Property located at 300 North Galleria Drive  
(SEC 78 BL 2 LOT 5.12)

Designated MI.

DECISION: Six month extension granted.

OTHER:

VENDA PROPERTIES

Request for a use variance  
(mine, sand and gravel)

Property located on Goshen Turnpike  
(60-1-68.13)

Designated OR

NOTIFICATION: Applicant to reapply to the  
Zoning Board of Appeals.