

TOWN OF WALLKILL ZONING BOARD OF APPEALS

MEETING

MAY 8, 2006

PRESENT:

Ellouise Raffo
Nina Guenste
Eric Johnson
William Morgan
Roseanne Sullivan
Priscilla H. Thompson

ABSENT:

James A. Mattatall

OTHERS PRESENT:

Joseph A. Owen, Esq.

MEETING OPENING:

The May 8, 2006 Meeting of the Town of Wallkill Zoning Board of Appeals opened with the pledge to the flag following by the roll call.

E. Raffo: Are there any corrections to the previous meeting of April 10, 2006? Hearing none, I move to approve the April 10, 2006 Meeting Minutes. Seconded. All in favor; Motion carried.

The following Hearing Reviews were reviewed for May 8, 2006 and Public Hearings conducted, and voted upon as noted.

Requests for Extensions

1) Alta East

E. Raffo: Read correspondence requesting a six month extension to 12-12-06.

Motion made to give a six month extension for an approved variance by P. Thompson and seconded by E. Johnson; All in favor; Motion carried.

2) E. Tetz & Sons

E. Raffo: Read correspondence requesting a six month extension to 12-12-06..

Motion made to give a six month extension for an approved variance by N. Guenste and seconded by E. Johnson; All in favor; Motion carried.

3) TAC Associates

E. Raffo: Read correspondence requesting a six month extension to 12-12-06.

Motion made to give a six month extension for an approved variance by E. Raffo and seconded by E. Johnson; All in favor; Motion carried.

4) Fairways

E. Raffo: Read correspondence requesting a six month extension to 12-12-06.

Motion made to give an overall six month extension for all variances made by E. Raffo and seconded by E. Johnson; All in favor; Motion carried.

5) Eric Johnson

E. Raffo: Read correspondence requesting a six month extension to 12-12-06.

Motion made to give a six month extension for an approved variance by N. Guenste and seconded by W. Morgan ; 5 in favor, 1 abstain; Motion carried.

Public Hearings

NILDA M. SPINELLI: Request for a variance of 249-8-A-6-d-1-a for an above

ground swimming pool located at 17 Georges Road (Sec. 82, Block 2, Lot 13) and designated R-2.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing was read at 7:49 P.M.

E. Raffo: I will open this Public Hearing at 7:50 P.M. Please tell us exactly what you want to do.

N. Spinelli: I want to put in an above ground pool all the way on the far side on the right, ten feet away from the property in the back and the property on the side because I can't put it too close to the house because I have a flower bed and that's the flattest part of the yard, is that corner right there.

E. Raffo: You're looking for variances from the side yard setback, rear yard setback and front yard?

N. Spinelli: Right.

P. Thompson: Why can't? I rang the door bell and no one answered. Why can't you put it over on the other side?

N. Spinelli: It's the gazebo, because that's too far down. It's very steep down. From the cul-de-sac, did you go down to the cul-de-sac?

P. Thompson: No.

N. Spinelli: It's very deep down. The other side is the flattest part.

P. Thompson: Do you have plans to put up a deck around the pool?

N. Spinelli: No.

P. Thompson: I will warn you right now, that's not going to happen.

N. Spinelli: No. There will be no deck around the pool.

E. Raffo: Is there anyone from the Public who wishes to comment on this application? Please state your name for the record.

J. Singh: I'm here on behalf of my father Mr. Jaspal Singh who owns the property. I'm representing him in this matter.

E. Johnson: What does he own?

N. Guenste: His father owns the property.

N. Spinelli: I got a Certified Letter from his father.

P. Thompson: Did you have anything else to say?

J. Singh: I'm sorry.

P. Thompson: Did you have anything else to advise?

J. Singh: He's objecting to this because his lot is below the applicant's property and any discharge of water from this pool will drain onto this lot.

P. Thompson: Do you have the empty lot or the house?

J. Singh: It's empty land right now. Any discharge of water would go on this property and we are planning to build this house in the next couple of years. Any discharge of water from the pool is going to affect only us none of the other neighbors.

N. Guenste: How big is the pool?

N. Spinelli: It's twenty one or twenty four, I'm not sure. I don't understand they're concern about the water coming down. I've been here four years and I have pictures showing that the property is not taken care of.

J. Singh: We mow the grass every year. We take care all of it.

N. Guenste: I would be concerned about any discharge because of the pool being up.

E. Raffo: What was that?

N. Guenste: No, I mean no intentional discharge.

E. Raffo: I will put a stipulation on this variance that you cannot come back for another

variance for a deck.

N. Spinelli: No, I don't want to put a deck back there.

E. Raffo: That will be a stipulation.

N. Spinelli: Okay.

J. Owen: No. I say you want to stipulate that she can't put a deck there. Are you agreeable to that?

N. Spinelli: Yes. I'm agreeable.

E. Raffo: And, that you can't drain the pool to cause problems down below.

N. Spinelli: Now, God forbid something happens, I'm not saying it would; but I'm saying if something were to happen and water goes over, is he going to (not clear).

E. Raffo: If there's an accident I can't tell you what your neighbor is going to do.

So, the variance would have a stipulation that there would be no deck and no draining of pool to cause flooding on the other property. Any one else from the Board? Any one else from the Public on this application.

E. Raffo: I Move to close the Public Hearing at 7:59 P.M.. I Move that we grant a variance for the property located at 17 George's Road from Section 249-8-A-6-b-1-1, rear yard setback from twenty feet to ten feet, side yard setback from twenty feet to ten feet with the stipulation that there would be no deck and that the pool will not be drained to cause flooding to any of the neighbor's property; Seconded.

DISCUSSION: None.

VOTE:

In favor (Aye) 6

Opposed (Nay) 0

DECISION:

E. Raffo: The variance is granted; please see the Building Department.

RAMON VASQUEZ: Request for a variance of 249-22-D (side yard setback) for his property located at 22 Evan Court (Sec. 76, Block 8, Lot 25) and designated R-1.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing was read at 7:59 P.M.

E. Raffo: I will open this Public Hearing at 8:00 P.M. Please tell us exactly what you want to

do.

R. Vasquez: I have a very small deck at the moment. I just want to make it larger, sixteen by sixteen.

E. Raffo: Any questions from the Board?

N. Guenste: I was trying to figure out. Is sixteen feet larger than most?

R. Vasquez: No.

N. Guenste: I thought it was sixteen by ten.

R. Vasquez: The last one that was built back in August . . .

N. Guenste: Legally.

R. Vasquez: Legally back in August was twelve by fifteen.

N. Guenste: Yes. I didn't think it was fifteen by sixteen.

R. Vasquez: No.

N. Guenste: I would like to see them. I know the situation over there with the decks but I would prefer to see them all look, you know no bigger because I think sixteen we're pushing it and the next thing someone will come in with twenty four. I would really like to see this down. You have sixteen feet along the house and then.

R. Vasquez: The last one that was built was twelve feet wide by sixteen.

N. Guenste: Okay. There's one already at sixteen.

E. Raffo: Is there any one from the Public on this applicant? I move to close this Public Hearing at 8:04 P.M.

R. Vasquez: I originally requested a sixteen by sixteen. I can make it shorter by making it fifteen by sixteen feet..

E. Raffo: I Move to grant a variance from Section 249-22-D for a rear yard setback from twenty feet to eight feet and a side yard setback from twenty feet to four feet; Seconded.

DISCUSSION: None

VOTE:

In favor (Aye)	6
Opposed (Nay)	0

DECISION:

E. Raffo: The variance is granted; please see the Building Department.

MIDDLETOWN MEDICAL: Request for a variance of 249-12F (parking) and 249-12-H for property located at 111 Maltese Drive (Sec. 53, Block 4, Lots 10.1 & 10.2) and also Sec. 54, Block 1, Lot 6) and designated HC.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing was read at 8:07P.M.

E. Raffo: I will open this Public Hearing at 8:08 P.M. Please tell us exactly what you want to do.

A. Fusco: Middletown Medical had added a six thousand nine hundred and ninety square foot addition on to they're building previously. With that addition they had some of it as medical office space and others as storage. In the interim and the final stages of development some of they're needs have changed. They want to convert some of the storage space into medical office space. There are no issues in relationship to the New York State Building Code in that regard however, there were parking issues. So, we went to the Planning Board and of course they didn't have the authority to approve it without having a parking variance. As you are aware we had been in previously the site is very tight in relationship to the parking requirements in accordance with the Town of Wallkill Code. One of the things we did do however to prepare for the variance and also the previous (not clear) is we do have a report prepared where we had physically gone and counted parking spaces for over a week and, this was in December. It did show that on any one time during that one week period on the worse situation there were still sixteen spaces on a worse case scenario during the various time periods that we had. Other times there were more, forty, fifty spaces, things of that nature. So, towards that end we did try to put forth as many additional spaces as we could. We were required to have two hundred and twenty three spaces. We were able to put forth a number of rows that we thought we would be consistent with and we tried as much as we could to come up with them. However, we came up four short. One of the things that we did do is we took the loading dock space that we had which was never used and we added six spaces out of that loading dock area otherwise we would be requesting a variance of ten spaces. However, by doing that we're asking for another variance because we don't have a loading dock but the loading dock was in the back of the building. It was never used. We have a patient drop off area in front of the building with various sufficient loading and unloading. When UPS or FED EX comes, there's still plenty of room for any of those trucks to park there and still have plenty of room for the patient loading and unloading. Basically we're asking for two variances. One is for the relief of the loading dock which hasn't been used and the other is for four parking spaces. That is in addition to the five parking spaces that we were previously granted by this Board.

E. Raffo: The original application was two hundred twenty three spaces.

A. Fusco: That's correct. That count is the original from the five that we had been granted. I didn't want to mislead anybody.

E. Raffo: Any comments from the Board?

N. Guenste: First of all where are your handicap spaces? I mean, I don't see any handicap spaces at all? Where are they now?

A. Fusco: We were just concentrating on this map on the spaces but I can show you the spaces that we do have. Showed Mrs. Guenste.

N. Guenste: This is the new one. This is all the way on the other side of the building with the entrance over here.

A. Fusco: Right. I can show you on the other approved map. I can show you where we had all the other seven approved from the previous one. We will be going back to them to get those approved. We will be having all our handicapped spaces.

N. Guenste: No. I don't like looking at something to approve it when I don't see whether you're going to have handicap spaces or accessible to the building for people that are handicapped especially in the Winter. The other problem I have and I would really ask this Board to have this traffic study redone. It was done the week before Christmas. People don't make appointments with a Doctor the week before Christmas. It's probably the slowest period at a Doctor's office. You know, the times were ten to eleven; three to four; one to two; two to three; two thirty to three thirty. Those afternoon hours, kids are getting home from school. I just think it's a very poor traffic study.

A. Fusco: We tried to be . . .

N. Guenste: You can go to almost any Doctor's office that week and you're going to find empty spaces. I would like to see a traffic study done now and now at the same times on every day. You know, one day at ten to eleven; varied hours on the study to show what's going on. What time do they start they're hours and how many Doctor's are there at ten o'clock in the morning. I don't know but I don't think it's fair to say you have all these open spaces.

A. Fusco: One of the things it wasn't done the week before Christmas. It was started when with our application with the Planning Board.

N. Guenste: No. The dates here are December 14th, 15th, 16th, 19th, and 20th and the 21st.

A. Fusco: Right.

N. Guenste: That's a week before Christmas.

A. Fusco: I'm sorry. We didn't do that for this meeting.

N. Guenste: I'm not saying that.

A. Fusco: We did it because that's when we had our meeting with Mr. McGoey and the Planning Board so we did it at that time to be current rather than do it in October for a December meeting. One of the things that I also would like to add is that the nature of what we're proposing to put in here is an MRI unit. That contract is not due until June and part of the space is going to be utilized is going to be for the MRI so, it's not going to be for regular Doctor services. So, you're not going to have regular Doctor's hours where you have a visit every ten to fifteen minutes. These will be one hour sessions. At the most, there will be two patients per hour. It's not going to be a big overflow on the number of spaces that we're proposing. It's not going to be that strained. I understand what you're saying in relationship to during the site work and during the construction we would be doing I was there quite often and there was no time that I couldn't get a parking space actually quite close to the front. So, I can attest to that. I was there a great deal of the time and the parking is representative as were the Town Engineers. The building now has a Certificate of Occupancy placed on the previous approvals. Now, we're coming in just to modify this approval and I seriously don't believe that with the small changes that we're making will adversely affect anything other than provide more medical services to the community.

N. Guenste: But like I was saying I would like see. You know, you're asking to have less spaces than allowed. I really want to see a plan that's going to show me where those handicap spaces are, where the ramps are so that I know that you're going to have adequate parking.

A. Fusco: I understand what you're saying.

N. Guenste: Do you have a ramp here?

A. Fusco: There are ramps on the . . .

N. Guenste: But there are none in the back where you have handicap parking.

A. Fusco: The main entrance, the drop off is right here. That's the entrance.

N. Guenste: Yes but there are handicap people that don't get close.

A. Fusco: There are handicap spaces. I can show you on the approved plan. The handicap spaces are in this area. They just weren't labeled on this because we were concerned about the parking count. The Planning Board generally sets the location of the handicap spaces and we're going back there. The handicap spaces are really set by the Planning Board. I can

understand you wanted to see them. We have them on the approved plan. On this we were just concerned with the parking count. They are near the entrance. They have to be. In fact, I think we're going to add some handicap spaces because if you notice on the study those are the ones that are lacking. The handicap spaces are lacking not the normal spaces.

E. Raffo: Is there any one from the Public on this application? Any one else from the Board?
I Move to close this Public Hearing at 8:20 P.M.

I Move that we grant a variance to Middletown Medical at 111 Maltese Drive to allow parking from two hundred twenty three to two hundred fourteen spaces under Section 249-12F and for approval of the off street loading dock from the plan under Section 249-12H; Seconded.

DISCUSSION: None

VOTE:

In favor (Aye)	6
Opposed (Nay)	0

DECISION:

E. Raffo: The variances are granted.

ROWLEY DEVELOPMENT: Request for a variance of 249-28-D (side and rear yard setbacks) for property located at 30-40 Golf Links Road (Sec. 78, Block 1, Lot 67.1) and designated PID.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing was read at 8:22P.M.

E. Raffo: I will open this Public Hearing at 8:23 P.M. Please tell us exactly what you want to do.

W. Abt: My name is Weldon Abt and the Architect for the owners and Brian Rivenburgh is here also representing Rowley Development. The application is for an existing warehouse building on Golf Links Road on this three acre parcel. That would reduce the side yard from

the required fifty feet to twenty feet. We're also proposing to add a fifty foot wide easement for access to get to this building. There also is a small roof addition in the back which requires a fifteen foot rear yard so we're asking for a variance for that. Also, the existing building is closer than the sewer treatment plant building.

N. Guenste: So, you're using the other parcel in the back?

W. Abt: That's correct.

N. Guenste: It's two different parcels, right?

W. Abt: Yes.

E. Raffo: Is there any one from the Public on this applicant? Any one from the Board. I will close this Public Hearing at 8:25 P.M.

I Move that the variance for Rowley Development at 30-40 Golf Links Road for a rear yard setback from fifty to forty eight feet under Section 249-28D-2-A; and a side yard setback from fifty feet to twenty feet under Section 249-28-D-2-C; and that there will be a sixty foot easement along the property line between 30 and 40 Golf Links Road; Seconded.

DISCUSSION:

None

VOTE:

In favor (Aye)	6
Opposed (Nay)	0

DECISION:

E. Raffo: The variances are granted.

MEL FERRER/BONEIM LLC: Request for a variance of 249-10-F (lot size and side yard for property located on Daly Road (Sec. 64, Block 1, Lot 19.1) and designated RA.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing was read at 8:29P.M.

E. Raffo: I will open this Public Hearing at 8:30 P.M. Please tell us exactly what you want to do.

A. Lipman: My name is Alan Lipman. I'm representing the applicant Jada Developers. I'm just going to get a stack of papers together for you and hopefully I have enough copies. These are documents that were generated in the Town through the Building Department, particularly by Mr. Steenrod. I'm a little perplexed myself about the application in the sense that if you look through those papers you will find that a Building Permit for this lot was

issued by Mr. Steenrod. Then if you turn to the second page you will see a Stop Work Order. The work was stopped because of the septic system which at that time did not meet some standards, which standard is not relative at the moment because subsequently to this there was an approval design for the septic for this parcel and I have that here that's issued by the Health Department in 2005. There are a number of issues with Mr. Steenrod which include some architectural issues, technical issues but never was there an issue by him with respect to the size of this lot and there wasn't an issue from Mr. Steenrod with respect to yards.

P. Thompson: What?

A. Lipman: In respect to yards, side yards specifically. This plan that I have here is a miniature of it in your papers that I just gave you. This shows the approved septic design that was done at the time for Amor Homes back in 2002. It shows the outline of a proposed structure which looks to be about forty feet square and it shows the lot to be forty thousand square feet. This was prior to the amendment to the ordinance that was made in December of 2002. If you look, it shows that we provided at that time thirty five thousand seven hundred and seven square feet because that's all there was and has always been. You get down to the table of yards, you will see the front yard required forty feet; we had eighty feet provided. Similarly, fifty feet for the rear with seventy three feet provided. One yard size was thirty feet with forty one provided and both yards required eighty feet and we show eighty eight feet.

J. Owen: The zoning had changed.

A. Lipman: In fact, both side yards now require one hundred feet. Now, I looked at your ordinance fairly carefully and I see that there is a provision that under 249-09-B that says that existing lots can be used if they are in separate ownership in 1961. I don't know the significance of that date. It probably was the adoption of some form of the zoning ordinance. I haven't given it to you but the deed for this property was dated from Mr. Daly to Howard Edward Walsh and Delia Marie Walsh in October 1969. It had been in separate ownership since that time.

E. Raffo: Is it in their ownership now?

A. Lipman: No. Not in their ownership. It has been separately owned and separate from anything else owned by the succession.

E. Raffo: I understand that. My question is we've gotten this from Mr. Steenrod, August of 2001.

A. Lipman: Yes.

E. Raffo: When did you buy the property?

A. Lipman: I can answer that question very simply. In May 2003 from Amor, this is the deed. It was delivered in May of 2003. The contract was March 2003 and the purchase price was seventy thousand dollars.

N. Guenste: Our application says 2005.

A. Lipman: That's a different deed.

N. Guenste: This deed.

A. Lipman: No this is not this deed. This is a deed, the J. W. Decker, Inc. There is a subsequent transaction from J. W. Decker.

E. Raffo: That was my question. When did your current client purchase this property?

A. Lipman: He contracts to buy it on April 15, 2005 and he pays one hundred twenty thousand dollars. Now, I don't understand the history of the Building Department. I know Mr. Steenrod and know his level of expertise. He knows what he's doing. He issued a permit in 2002 for this lot of thirty thousand plus square feet against the requirements of the zoning ordinance at that time. He, I believe, took a position with this lot was building what was then an area problem.

J. Owen Esq.: He's not able to do that. You're application to this Board is the year 2006. It changes.

A. Lipman: I understand that.

P. Thompson: Yes.

A. Lipman: What occurred is a buyer who believed that the lot was a build-able lot. It is pre-existing. It is separately owned, at least we believe it is since the year 1963. Whether Mr. Steenrod believed he did it right, I don't know. Let's assume for a moment that there should have been a variance and there wasn't. The fact of the matter is that people believed that it was build-able.

E. Raffo: It might have been true in 2002 but your client purchased this property in 2005.

A. Lipman: When the Health Department issued an approval shortly before.

N. Guenste: In 2005, I have the zoning information from 2002 and the zoning requirement back then wouldn't allow a building on there because of the soils type. So, I don't know where your information is from.

A. Lipman: Well, . . .

N. Guenste: Let me finish, please. The application says there are ERB soils and NAB. I don't know what NAB is but on the soil map in Orange County and there is no ERB land unless it's all the way back off the road in that area. There are no septic allowed. Conform to the new zoning laws but as our Chairman is saying your client just purchased this property in June 15, 2005 who is a developer and is familiar with the code. This isn't a gentleman who just came up and said I want to buy a lot to build on. He's in the business. He knows what our Town codes are. You've been here before and know the Town codes, soil types. You should have investigated this prior.

M. Ferrer: Excuse me. If I may, I'm the builder but I'm not the owner of the property. I'm representing the owner who had no knowledge of how to do it and he purchased this piece of property based on the information that he was given which the document shows a permit was issued for this property. The only time you've seen me here was in respect to this particular property in all fairness and what you're saying is true. Had I been the one purchasing the property I would have done my homework a little bit better however, I'm not the one who bought the land. I'm only the one who has been retained to build something on this property.

E. Raffo: It was under Jada Developers in December. Regardless, the property was purchased in 2005 by Jada Developers. This is based on the application which your client purchased in 2005. That's number one.

A. Lipman: I didn't fill out the paperwork.

E. Raffo: I have an application here dated January 2006 and asking for a variance from forty thousand to thirty thousand square feet.

A. Lipman: We were not aware of the amendments in 2003. So, when the application was filled out those on that side of the table making the application was based upon what they were told. I said to you before I started that I am perplexed by the application and I'm sure

you are also.

E. Raffo: Yes, and considering you just gave us additional paperwork tonight, the only thing I can do at this time is to leave the Public Hearing opened. That would be my decision.

A. Lipman: I don't have a problem.

E. Raffo: Is there any one from the Public on this application?

S. Daly: My name is Saun Daly and with me is my wife Cynthia. We own the property directly across the street. Historically nobody has been able to build there because of the soils types and because of how close the leach field is to our septic. If you look at the plans they're asking for a variance setbacks so they can squeak in a septic close to my well let alone their own. If you look, they only going to make their well by three inches. If you grant a variance on soils, it's not acceptable. I've got pictures here showing runoff that comes out of this lot. The retaining wall that they had previously put up washed out within a month of them putting it up because the soil type does not hold the water. The pictures prove it.

P. Thompson: When was that put up?

C. Daly: That was put up July of last year. The site work that was done in March of 2004 was because I called the septic engineer and according to the septic engineer Eustance & Horowitz, they approved the septic based on the fact that there was no well within three hundred feet of the property. Our well is right across the street, less than two hundred feet.

S. Daly: Furthermore, if you look at the plans, it's hard water out there. Whoever buys this property after they build it they will have their hands tied with all the problems.

E. Raffo: The only thing I can suggest is to keep the Public Hearing open.

A. Lipman: Can I ask what note you're referring to?

S. Daly: Note #16.

E. Raffo: We've going to leave the Public Hearing open. It will be continued June 12th. Any one else from the Public?

E. Cuccio: I was a member of a Planning Board for three years. I understand. This is definitely in a very gray area especially which may seem a little harsh but someone attempted fraud. This company went on my property with a backhoe and dug test holes for percolation

tests to try to get by the soil types. I called in about it and no one returned my call. They attempted to present a false soil survey maps. They built a retaining wall that lasted about a month. The other problem was that Saun is worried about his well. What about the well that they're going to dig for? It's been interesting to me that this survey here. It's nice to have this drawing but there's no approval. It seems with this company that goes on and on as far as how much can you believe with what they're telling us. I'm very concerned about that. Thank you.

A. Lipman: I would like to know when the percolation test was done.

E. Cuccio: I say attempted and I say your people went on my property and dug test holes. Now, what was the reason for the test holes?

A. Lipman: The question I asked was when were these tests done?

E. Cuccio: I believe it was last Summer.

A. Lipman: I take it you don't know when they were done.

E. Raffo: He wouldn't know anything about it.

A. Lipman: But, I do know that tests specifically for the application was a Stop Work Order on this property in 2002 or 2003, whatever the date was. It occurred because someone alleged that Amor Homes had dug holes for percolation tests on the adjoining property and had gotten a Building Permit based upon that material that was submitted to Mr. Steenrod. I am aware of that and that is why a new design was accomplished in accordance with that plan and that plan goes back to 2003 and it just was at a point where there's an approval of a design by the Health Department in 2005. So, I don't know what tests he's talking about.

E. Cuccio: Amor is in Newburgh, right?

M. Ferrer: Right.

E. Cuccio: I just looked at that and I remembered the number that I called and I'm sure I can retrieve my telephone numbers and I was calling the company in Monsey.

N. Guenste: I don't even see where these plans were approved by the County.

A. Lipman: Here is the County's approval.

N. Guenste: They're supposed sign the plans, aren't they? You know, you're telling me that was approved in August 2.

A. Lipman: August 2005.

N. Guenste: It was approved on the same day?

A. Lipman: I'm not sure.

N. Guenste: Can you leave us a copy of this plan?

A. Lipman: I will give you a copy. There are also letters from . . .

N. Guenste: It's also, I can buy a car and say it was bad in 2002 and had a dent and somebody fixed it. The owner bought the property in June of 2005. That is our issue here. That's where I'm coming from. As I told you earlier, our code back in 2002 didn't allow the things you're saying it allowed so I don't understand . . .

A. Lipman: No, I didn't say they allowed it. I said quite the opposite. I said that . . .

N. Guenste: You know, my question is the soils listed on the application are totally wrong.

A. Lipman: Which application?

N. Guenste: The application to us for the variance. The soils that are listed, you can't put in any septic systems and it's because of that you need a larger piece of property to build a house, not forty thousand square feet. There's all these questions and we need to look and the additional information given to us.

A. Lipman: I don't have a problem with you're doing it.

Unidentified Person: I just have one thing, Mrs. Chairman.

E. Raffo: Come up and give us your name please.

W. Daly Sr.: My name is William Daly Sr. I'm Shaun's father. Shortly after the Stop Work Order was placed on the property, the property changed hands afterwards. It seems as if they're shuffling the papers here from person to person to try. Every time something stops, we'll put in another name and open up a new permit. That's what it appears to us.

E. Raffo: Well, we're going to take a look this.

W. Daly Sr.: The irony is the property was owned by my grandparents and it has been passed on that it can't be built on. That's my say. Thank you.

K. Daly: My name is Karen Daly, and I'm William's wife. It's very redundant. The first time they did it twice on Mr. Cuccio's property for the percolation tests. I spoke to the engineer and I said, you are on Mr. Cuccio's property. The property you want to do these tests is at the corner. He said I was testing the holes. I said but you're on the wrong property. I believe the second time was last year. After that I saw them again and they were perking on the left side. I said you're testing with a shovel? And, they said we only have to go down twelve inches. I said to do percolation tests on that property you only have to go down twelve inches? I did not get their names. They did not have any writing on the side of their truck. That's all I can add.

E. Raffo: We're going to look over this again.

A. Lipman: I'm going to give you another document because I don't want you to be surprised next month.

E. Raffo: Any documents that should be supplied . . .

A. Lipman: I understand. That's why I want to give them to you. I'm going to give these to you now.

N. Guenste: I guess the 2002 deeds and 2001, I don't think they would be pertinent at all.

E. Raffo: Mean while, we will keep this Public Hearing open and schedule you again for next month which is June 12, 2006.

DECISION:

No Action. Public Hearing left open. To be continued June 12, 2006.

491 NORTH STREET LLC.: Request for a variance of 249-26-B-3 (Use variance) for property located at 491 Route 17M (Sec. 38, Block 8, Lot 9) and designated HC.

Mrs. Thompson: The mailings were reviewed by the Board and filed by the Secretary. The Public Hearing was read at 8:29P.M.

E. Raffo: I will open this Public Hearing at 9:00 P.M. Please tell us exactly what you want to do.

M. Olsen: My name is Mark Olsen representing the client. Our clients purchased this building at 491 Route 17M as is to an extent. He has done some modifications, I believe, for the landscape tenant and there was a beauty salon that's now been vacated in that space. He has a tenant that wishes to come in and is before the Planning Board on that however, there existed two apartments on the second floor. The client has found out that he's only permitted one apartment upstairs. So, we've been directed here to acquire a variance for the one additional apartment on the site.

E. Raffo: How long has your client owned the premises?

M. Olsen: About two years.

E. Raffo: Do you have any idea how long that apartment existed?

M. Olsen: It was there when he purchased it, that's all I know.

E. Raffo: The extra apartment is vacant right now?

M. Olsen: Yes.

E. Raffo: Any questions from the Board?

N. Guenste: Yes. In the application it stated something about an addition to a third apartment upstairs?

M. Olsen: There was a, the Building Department actually issued comments to Mr. McGoey in a work session and that came from the Building Department's comments. We pointed out at a subsequent work session with Mr. McGoey that there's two apartments up there and no intention for a third. What happens is when you enter the stairs from the front of the building and go upstairs there are two doors at the top of the stairs. They're all one apartment. The kitchen and bathrooms on the left side and the living room and bedrooms to the right. I think that's where that misinterpretation came from.

N. Guenste: The problem I have is with the application it says see attached sheet attached and then the letter that we have states that you're asking for three apartments upstairs.

E. Raffo: Yes, it does state that.

N. Guenste: And it points out that it will require Zoning Board approval because you're only allowed one apartment.

M. Olsen: Are there two sets of comments or one set of comments?

N. Guenste: That is comments from the Building Department and the other ones (not clear). You know, and you're saying the part. I have this thing about these eight parking spaces across the back. I've driven by a couple of times because I live right near there and at no time was there any parking spaces open back there. It was all landscaping equipment all over the place. So, I don't even see how you can consider them for parking spaces for the retail store and tenants when they aren't. You know you've got people coming in to work. Those eight spaces really aren't there. I can drive by any day and there's dump trucks and machinery all behind the chain link fence.

M. Olsen: If I may comment on that. Those parking spots indicated in that landscape yard are indicated to be delineated as part of the approval process. They're not indicated as

spaces. There's new pavement that's going to be put in the back there.

N. Guenste: Yes but you can't show parking spaces to be approved when they're not really going to be there.

M. Olsen: It was part of the Planning Board approval. That's what that plan was developed for.

N. Guenste: I have an issue with that.

R. Sullivan: The third apartment or no.

M. Olsen: No, just two apartments.

N. Guenste: It did say three apartments. I really need to know what are they asking for? All you're telling me here. I'm still confused on what you're asking for.

M. Olsen: Just an additional one apartment. There are two apartments that exist in the building.

N. Guenste: You're saying an additional one apartment. Are you saying . . .

M. Olsen: What's permitted in the zone is one apartment.

N. Guenste: Right.

M. Olsen: There are existing two apartments.

E. Raffo: You want a variance to have two apartments above the retail space.

M. Olsen: Correct.

N. Guenste: So, now the parking spaces aren't there. They're proposed.

E. Raffo: He's in the Planning Board now.

N. Guenste: But we're the ones if they don't have the spaces we have to give them a variance. Those eight spaces in the back really don't exist. It's filled with landscaping equipment.

M. Olsen: It's up to the landlord to make provisions with the tenant to move his equipment whether that equipment goes inside or it goes up against the building.

N. Guenste: It's still not right.

M. Olsen: It's his business but I'm showing it from a dimensional standpoint that these spaces do fit.

R. Sullivan: Will they still be able to store his equipment there with those parking spots?

M. Olsen: He will be able to store some equipment. I don't think he can take all his equipment. Some may go on the side and some will be against the building. I don't know.

J. Owen: Only give him a variance for what he's here for is it. That's it.

E. Raffo: He did not come for a variance to allow that parking area. He's asking for a variance for the second apartment upstairs and that's all. Any other questions? Is there any one from the Public on this application? I move to close the Public Hearing at 9:07 P.M.

E. Raffo: I Move to grant a Use Variance under Section 249-26-A to allow a second apartment above the retail space at the property located at 491 Route 17M; do I have a second?

P. Thompson: I have a question before we do anything. The building was numbered 489.

M. Olsen: I don't know. As far as I know it's 491.

N. Guenste: Can I interrupt again but in our code and it says to have two apartments, office space, warehouse and the retail. We need twenty one spaces to work. How come they are allowing him to have a variance for an apartment if there aren't enough spaces according to the code.

J. Owen Esq.: He was only sent here just for the issue of the extra apartment.

E. Raffo: That's their problem.

P. Thompson: How many uses can he have?

J. Owen: He could have multiple uses there. It was a pre-existing business.

N. Guenste: It wasn't pre-existing. It was not there before the new code.

E. Raffo: That's it. My problem here is I've got one request for one variance in front of me to allow a second dwelling unit upstairs. That's all he's before us for.

W. Morgan: And, that's what we're voting on.

E. Raffo: Yes. Do I have a second? Motion was seconded.

VOTE:

In favor: (Aye)	5
Opposed (Nay)	1

DECISION:

E. Raffo: The variance is granted for one additional apartment.

TOLEN - Continuation of Public Hearing

Mr. Tolen: We were held over from our Public Hearing from last month.

E. Raffo: Okay.

Mr. Tolen: We're making progress. The lawyers and engineers seem to be working at a slower pace than I would like so, I think we have to ask to hold it over once more. We had the percolation tests done and they were good, they told me. We're doing deep soil tests this week. The surveying has been done.

J. Owen Esq. Do you want it put over?

E. Raffo: Do you want to hold it next month?

Mr. Tolen: He promised me he will have everything. They said they would have the plans for the septic system. If we can hold it over we should have everything ready.

E. Raffo: We will continue this Public Hearing on June 12, 2006.

REVIEWS

Fox/Fairweather
5 California Drive
Section 34, Block 5, Lot 8

A. Fusco: My name is Al Fusco and I'm representing Stephanie Fox and Henry Fairweather at 5 California Drive. We've been before the Building Department. We went to get a Certificate of Occupancy for a transfer of property and basically what's occurred is they have an unusually shaped property and actually their property line abuts within seven tenths of a foot from their garage. The garage does not have a Certificate of Occupancy. That's one of the things that we need to settle with the Building Department. One of the situations is whether the front or the side is chose by California Drive to be the front yard and it also abuts on Route 211 West. They also have an enclosed porch which they need to get a Certificate of Occupancy for. They're just purchasing this property now and we're trying to straighten things out for them. There's also a shed and a pool but we took those down. They're gone. We figured enough is enough already. Basically we have a chart there and we are looking for variances on this. With the garage we're supposed to have a thirty five foot front yard and we only have twenty seven feet. So, we're looking for a 34.3 foot variance. There is, however, we have 17.5 feet from their property line to the edge of pavement. So, even though it sounds extreme, it doesn't look extreme. It doesn't look that way visually when you're looking at the property.

P. Thompson: Does the property line go to the edge of pavement?

A. Fusco: No. The property line does not go to the edge of the pavement. We showed the distance . . .

P. Thompson: The 17.5 feet is to the edge of the property.

A. Fusco: That's correct. It's 17.5 feet from the garage to the edge of their property. The garage is on the property fortunately.

P. Thompson: Where is the driveway going to be?

A. Fusco: The driveway is not on the property. This is already existing.

E. Raffo: How old is this house?

A. Fusco: This house I would estimate to have been built around 1930 to 1940.

N. Guenste: Even if they sell it, it's still pre-existing.

A. Fusco: What has happened is the house itself apparently had not conformed in years but the previous owners had put a garage and this little porch. Then the people who are buying it now, went to get Certificate of Occupancy. The Building Department told them that they needed to get an engineer and this and that and we've been dealing with this for a period of time. We talked to them to remove the shed and the pool and now we're trying to settle on the garage and hoping we would get the variances and then go back to the Building Department. We have to draw up plans for the garage and take out a permit. This is all existing.

N. Guenste: The garage is not there now.

A. Fusco: The garage is there. Everything is there.

N. Guenste: How old is the garage?

A. Fusco: The garage is probably ten or fifteen years old.

N. Guenste: Did that predate? When did it require a Certificate of Occupancy?

J. Owen Esq.: A long time. What happened here with that is people built a garage and also put on a porch and didn't get a Building Permit. Didn't pay taxes on it either for all those years.

E. Raffo: I Move to hold a Public Hearing on June 12, 2006 at 7:30 P.M. or as soon thereafter as the matter can be heard. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section

within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified , or, 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing. Motion seconded.

Tom Brozycki/Georgette Sayers
79 Orchard Hill Road
Section 14, Block 2, Lot 31.1

T. Brozycki: I have with me a couple of pictures that might be a little more clear. I would like to build a pole barn and I'm looking for a two-fold variance. One because it would be a three-bay with thirty six feet on one end by twenty six. The other variance even though it's secluded in the woods, technically the best spot to put it would be, I guess you could consider it from Route 302 in the front. It's in front of the house a little bit and that would technically be in the front yard. The house is kind of put into a hill so that's the most level spot to put it.

N. Guenste: Where is your lot? Is this whole thing your lot?

T. Brozycki: Yes. I'm in the middle of approximately nine acres of property.

E. Raffo: I Move to hold a Public Hearing on June 12, 2006 at 7:30 P.M. or as soon thereafter as the matter can be heard. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified, or, 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing. Motion seconded.

Kathryn & Thomas Staples
8 Clark Street
Section 52, Block 4, Lot 6

E. Raffo: Go ahead.

K. Staples: I'm here to get a variance for my house to become a legal two-family and I don't

have the proper lot size, I believe. I bought the house the way it is right now. I've made no changes. It's the way I bought it. I bought it as a single family home.

E. Raffo: Oh, okay.

K. Staples: My real estate broker said it was a mother-daughter which I found since then that there's no such thing.

P. Thompson: Weren't you before us earlier?

K. Staples: Yes. I was here because I wanted to put a deck on the back of the house so, I kind of like opened a can of worms with this whole thing. I've already received one extension on the first variance for the deck.

P. Thompson: When did you get that?

K. Staples: January 9, 2006 meeting. I had it extended January 9th. So, I will need to extend it another six months.

E. Raffo: Make sure that you write us a letter.

K. Staples: I will do another letter before it expires. I don't know what the required lot size is.

E. Raffo: Now, you want to make your home a two-family house.

K. Staples: I don't want to make it. It is. It has a full kitchen, full bath and living room downstairs. I bought it as a single family home. I have a Certificate of Occupancy for a single family home. But being it has two full kitchens, it's considered a two-family home. I have to make it legal.

N. Guenste: So if we don't grant the variance you have to remove the stove?

K. Staples: I don't want to take the kitchen out. Kitchens are very expensive to replace.

E. Raffo: I understand that.

K. Staples: I would rather just go ahead and try to get it legalized. Especially since the house right next door is a two-family also. I've already spent like twelve hundred dollars and I

haven't bought a piece of wood yet. This was the way I bought it. I've owned the house for eight years and never had problems with the neighbors or anything like that.

E. Raffo: On your application you're actually asking for six variances?

K. Staples: What?

E. Raffo: There's six variances listed on your application.

K. Staples: For what?

E. Raffo: For lot area, side yard setback, rear side yard setback, lot width, front yard, and rear yard. So, in other words you need all this.

K. Staples: For the two-family structure, yes.

J. Owen: Are two-families allowed in that zone?

K. Staples: There's a two-family next door to me.

P. Thompson: Do you have enough room for four cars?

K. Staples: My driveway is one hundred feet long. I have a car and my son has a car. My husband has a truck. My husband has a BMW. We have never had a problem.

J. Owen: There's nothing in here that says you can have more than one single family residence in R-1 so, this is a use variance.

K. Staples: I went before the Planning Board and they said I had to come back here first.

J. Owen: Is there Public water and Public sewer there?

K. Staples: Yes.

J. Owen: It looks like it is a permitted use.

P. Thompson: It doesn't say.

J. Owen: It doesn't say it's a permitted use but then back under Section 249-22-C-9.

N. Guenste: Two-family dwellings and conversions of one-family dwellings to two-family dwellings.

J. Owen: Right.

E. Raffo: Where are you?

N. Guenste: It's under Section 249-22-C-9 on page 24986 and that's all it says.

E. Raffo: Okay. It's because she needs a minimum required for a two-family dwelling so, it's an area variance.

K. Staples: And, then the other variance I will just have to write the letter again to extend that variance because I have to go back, do I have to come back for a Public Hearing again now?

E. Raffo: For this one?

K. Staples: Yes.

E. Raffo: Yes.

K. Staples: And, then I have to go before the Planning Board again. So, we're going to run out of time again.

N. Guenste: Why didn't you do it with the other? You said you've lived in the house eight years?

K. Staples: Well, it kind of opened a can of worms when I came for my first variance to get the deck. I went to get the Building Permit and I had to get a variance.

E. Raffo: I Move to hold a Public Hearing on June 12, 2006 at 7:30 P.M. regarding the property of Kathryn and Thomas Staples at 8 Clark Street, Middletown for variances from Section 249-22-D-A, lot area from 12,500 feet to 5,000 feet; side yard setback from 15 feet to 4 feet; side yard setback from 15 feet to 8 feet; lot width from 80 feet to 50 feet; front yard?

K. Staples: It should be on the survey.

N. Guenste: Is that the front yard from the house?

E. Raffo: If you look at this map, I'm looking at the front yard it shows thirty eight feet so, they don't need the front yard. Section 249-22-D-A rear yard from 30 feet to 26 feet. All in favor; Motion carried.

E. Raffo: It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified, or, 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing. Motion seconded.

Frank Rossi

Bahrenburg Road and Silver Lake Scotchtown Road
Section 40, Block 1, Lot 15.221

N. Guenste: You're not on our list.

D. Yanosh: I'm not on there but I received a letter saying that I was on tonight.

P. Thompson: Is this new?

D. Yanosh: No. This is a mistake. We were here back in July. I got a variance for the landscaping for the Frank Rossi Site Plan on Bahrenburg Road and Silver Lake Scotchtown Road. It's taken us a while to finish up the Site Plan. We're doing the drainage study and the rest of it and the six month time frame had elapsed on that variance. So, I'm here now re-applying again. Remember this one, I did the landscaping fifty foot around.

N. Guenste: Yes. I know. I remember.

J. Owen: Just spare us the details.

D. Yanosh: I need another variance right. A new application and plans were submitted and I need another Public Hearing.

E. Raffo: I Move that we hold a Public Hearing on June 12, 2006 at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the application of Frank Rossi for property located at Bahrenburg Road and Silver Lake Scotchtown Road, Middletown for a variance for the landscaping buffer from 50 feet to 10 feet; All in Favor: Motion carried.

E. Raffo: It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified, or, 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing. Motion seconded.

MEETING CLOSE:

There being no further items to be presented to this Board; Motion made to close the Zoning Board Meeting at 9:48 P.M.; Seconded; All in favor, Motion carried.