

ZONING BOARD OF APPEAL ~ JUNE 11, 2007

TOWN OF WALLKILL
ZONING BOARD OF APPEAL

JUNE 11, 2007

Present: N. Guenste
E. Johnson
M. Petelinz
E. Raffo, Chairperson
S. Wilson

J. Owen, Esq.

Absent/Excused: R. Sullivan

The June 11, 2007 Meeting of the Town of Wallkill Zoning Board of Appeals opened with the pledge to the flag followed by the presentation of the May 14, 2007 Meeting Minutes.

The Minutes were reviewed by the Board. The Motion was made to accept the minutes as written; Seconded; In favor (4); Abstain (1); Motion carried.

The following reviews were made for the July 9, 2007 Meeting, extensions and public hearings conducted and voted up as noted.

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EXTENSION REQUEST (6 Month)

Wal-Mart Stores, Inc. (DBA Sam's Club):

Ms Raffo: We have received a for a 6 month extension to variances granted on 9/12/2005 which is due to expire on January 10, 2007 to July 10, 2007. On 5/2/07 the PB approved application for special permit and site plan approval and they are proceeding with the project.

Ms. Raffo: I Move to grant a six (6) month extension to WAL-MART STORES, INC. (DBA Sam's Club) for the following: Request for an area variance (249-8(A)(5) for installation of a (accessory building in front of primary building) for gasoline filling station pumps; Property located at 300 N. Galleria Drive (78-2-5.12); Seconded; All in favor; Motion carried. Extension granted.

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Leonard & Melissa Woods Request for a variance of 249-22(D)(a) (side yard)
1. side yard from 20ft to 8ft
For construction of a deck 18 x 11ft
Property located at 45 Mayer Drive
(76-8-46)
Designated R-1.

Ms Raffo: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 7:51 pm.

Ms Raffo: I Move to open the Public Hearing at 7:52 pm.

Ms Raffo: Please describe what you want to do.

Mr. Woods: To build a deck in the back yard, like everyone else.

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

Ms Raffo: Any questions or comments from the Board?

Ms Guenste: For the Public here tonight, the residents in these townhouses had tiny decks in the back and they drop off in the back. This is a pretty common occurrence for them to come in.

Mr. Wilson: Is it the same size of 11 feet?

Mr. Woods: Yes.

Ms Raffo: I Move to close the Public Hearing at 7:54 pm; Seconded; All in favor; Motion carried.

Ms Raffo: I Move to grant the following side yard variance from 20ft to 8ft; Seconded.

DISCUSSION: (None)

VOTE: In favor (aye) 5 Johnson, Guenste, Wilson, Petelinz, Raffo
 Opposed (nay) 0

DECISION:

Ms Raffo: The variance is granted. See the building department and remember it is only good for 6 months. If in that time you have not started work, please come back before that time and request an extension.

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Lissette Mazariegos

Request for a variance of 249-22(D)(a) (set backs)

1. front yard from 35ft to 29.2ft

2. side yard from 20ft to 16.8ft

3. side yard from 20ft to 18.8ft

For construction of front porch

(77-7-9.2)

Designated R-1.

Ms Raffo: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 7:56 pm.

Ms Raffo: I Move to open the Public Hearing at 7:57 pm.

Ms Raffo: Please present your request.

Ms Mazariegos: I want to build a front porch across the front of the house.

Ms Raffo: Any questions from the Board?

Ms Guenste: When I first saw it I was hesitant as some builders build right back and then send the people back for variances. Looking at the home it would make a good appearance and add to the area. It would be an asset; I will be voting yes.

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

Ms Raffo: I Move to close the Public Hearing at 8:00 pm; Seconded; All in favor; Motion carried.

Ms Raffo: I Move to grant the following set back variances : 1) front yard from 35ft to 29.2ft; 2) side yard from 20ft to 16.8ft, and 3) side yard from 20ft to 18.8ft; Seconded.

DISCUSSION: (None)

VOTE: In favor (aye) 5 Johnson, Guenste, Petelinz, Wilson, Raffo
Opposed (nay) 0

DECISION:

Ms Raffo: The variances are granted and you have 6 months to start work and if you don't send us a letter to request an extension, if not, you will need to reapply.

Carla Barbano

Request for a variance of 249-22 (use variance)
To permit operation of a dog kennel / boarding
Property located at 220 Prospect Road
(31-1-4)
Designated RA

Ms Raffo: The mailings were reviewed by the Board and filed for the record. The Public Hearing was read at 8:02 pm.

Ms Raffo: I Move to open the Public Hearing at 8:03 pm.

Steven Hunter, Esq.: This is for a parcel at 220 Prospect Road. We are asking for use variance for dog kennel to be operated. It is zoned RA. Across the street is a couple hundred acres owned by the Palisades Parkway and the 16.1 acre parcel adjacent is for a goat farm.

During the early 1980 owned by family breed and trained Labrador retrievers and sold to Triola and kept same operation with Whippets and 1991 Sarah Wilson were dog trainers renowned and ran their operation for a number of years. The present layout of fences and pens was done with them or prior. They operated it for training, breeding and boarding. In 1996 owned by Valentateni who did the same and the client began working there in 1996 about the same time they purchased the property. In 2001 they purchased the residence and continued the operation. The fencing and physical plant are the same as when she purchased it. It is operated as such and the business known as a 'country camp and spa' and have added the grooming. Most of the customers reside in New York City or Connecticut and bring their dog while they go on vacation and they then return the animal to you (owner). It changed as it is professional business with 7 employees and benefits for the employees and all of the proper withholding and on the books with employees and taxes. Each animal has own space and is taken out 2 times a day for exercise. They would like to know it is a legal business to continue.

As a use variance: Is there impact on the neighborhood – it has operated as such since 1980 and not changed so no real impact for that reason; Is it consistent with the neighborhood – I have been there and viewed the whole operation and it is on a dirt road in the TOW and most rural part of the Town with farms and parkland in the area. This is not self-created – it was this way when they purchased it.

Ms Raffo: It has changed hands a number of times with the same use and the client wants to make it legal.

Ms Raffo: Any questions or comments from the Public?

Frank Jad: I work for Carla and am retired on a fixed income. I also have to say some things. It is a fine facility and is the reason why people come from New York City and Connecticut where there are a lot of facilities - they pay to send their dogs this far. It is considered to be the finest and she is a fine trainer and takes care of the animals. Some animals have special needs and I have heard term kennel it is boarding really. It is best job I have had and a lot of fun. 90% or more are from outside the area and the money comes in and spent here and people work and live in the area and work on vehicles and on the property is done locally and brings money into the

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Town. It is a facility that improves the reputation of the county as it is well known and adds prestige.

Mr. King: I am Councilman from the area and get calls on just about everything and never once got a complaint on the business or facility. I was sitting in the back and got a call from someone complaining about frogs and snakes and back to this situation, I have been on the road and it is not actually rural but desolate, 3100 acres of State land, the goat farm next to them, if ever I get a complaint I would tell you and you would not know it exists and why I support the applicant.

Susan Krebs (friend): I have known her as a business person. She is organized, clean kennel and well run and she respects the animals and people and nature and in to doing environmentally safe products and gives back to nature which is important to. She takes care of my dogs and gives them extra special care and if you love dogs there is play time and they get treated better than husbands some times. It is not just money and business but respect.

Dotty DeVincent (goat farm): We never hear a peep and our dog creates more noise to get them going and have no problem.

Ms Raffo: If I have to come before the Board I hope to get as many people to support me.

Ms Guenste: To issue a Use Variance there are 4 items that need to be met – not realize reasonable return. Carla, or whomever, if you did not have the use permit granted, would you be able to financially survive without this business?

S Hunter, Esq.: It is her source of income. The property is there with pens and fencing existing and could not be used as other way not like warehouse.

Ms Guenste: I wanted to cover all 4 areas. And is one we did not cover in the other conversations.

Ms Raffo: How many dogs do you board?

Ms Barbano: 15 to 20 on average.

Mr. Wilson: Can you have a maximum is 35 to 40?

Ms Barbano: Yes.

Mr. Wilson: Can you put on a limit?

Ms Barbano: 45.

Ms Raffo: There is no problem with you but if you sold to someone else.

Ms Barbano: 45 would give them space and care they need.

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

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Ms Raffo: I Move to close at 8:14 pm; Seconded; All in favor, Motion carried.

Ms Raffo: I Move to grant a use variance for the training and kenneling of dogs subject to a limit of not more than 45 dogs; Seconded.

VOTE: In favor (aye) 5 Johnson, Guenste, Petelinz, Wilson, Raffo
 Opposed (nay) 0

DECISION:

Ms Raffo: The use variance is granted subject to the maximum of 45 dogs. Please see the building department for permits.

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Brown / AAA Developers Request for a variance of 249-26(D)
1. front yard set back from 35 to 13.5ft
2. rear yard from 40 to 10.0ft
3. area from 10,000 sq/ft to 7,433 sq/ft
(74-8-22) 377 East Main Street
Designated HC

Ms Raffo: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 8:19 pm.

Ms Raffo: I Move to open the Public Hearing at 8:20 pm.

Roger Ferris: I am here representing the applicant for a single residence at corner of Fair Avenue and East Main Street and is similar to adjacent buildings.

Ms Raffo: That is in an HC zone and for what you want the area requirement is 20,000 sq/ft for a residence in HC and the lot depth is 120 feet not 100 feet. This is way under; why would you want to build a residence in HC?

Roger Ferris: The others in the area are residents. There is a lot – the mailings went to people in that area.

Ms Raffo: East Main Street is commercial.

Roger Ferris: Driveway on Fair Avenue so it does not interfere with West Main Street.

Ms Guenste: In 1979 the zoning there had been 20,000 sq/ft. in 1985 he bought it was 20,000 sq/ft then. I can't believe you came here for a house on that lot in this Town. 13 feet in front and 10 in the back and Town has 25 from center of the line. My own is like that. It is ridiculous and know you have been here before and have asked. If you bring something it should fit the lot. He has had it for 22 years and to put anything on the lot is a hazard especially a residence. He bought an undersized lot and the owner may be applicant, but the applicant has been developing in the Town for quite a while. Will definitely vote NO on this.

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

Ms Raffo: Any comments from the Board?

Ms Raffo: We are talking right on Main Street and it is a quarter of the size.

Mr. Ferris: You would not want to put a commercial use on it.

Ms Guenste: If you take 25 feet on Fair Avenue and it goes 10 feet in the yard and about 40 feet to squish a house on. We have to think about the future and stop things like this going on. There are unbuildable lots in the town.

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Mr. Ferris: If the assessment was not buildable it would not be bad but it was and why we are here. If it was a turn down it would give him some thing to work with. He is out of area owner.

Ms Guenste: You are here just representing him.

Roger Ferris: Would you feel comfortable with smaller house or the use?

Ms Guenste: If you have 40 feet when you take right of way from the Town.

Roger Ferris: Road is not center of the right of way there. The physical center you are correct but center of right of way is not.

Ms Raffo: I Move to close the Public Hearing at 8:27 pm; Seconded; All in favor; Motion carried.

Ms Raffo: To grant the following variances: 1) front yard set back from 35 to 13.5ft; 2) rear yard from 40 to 10.0ft; and, 3) area from 10,000 sq/ft to 7,433 sq/ft; Seconded.

DISCUSSION:

Mr. Johnson: When they purchased it, it was a non conforming lot and it is a substantial request from 20,000 to 7,500 sq/ft. It is an undesirable change on such a small lot with a house and it is commercial area for putting up a home.

Ms Guenste: It needs to be said it is undesirable change to put huge house on substantial variance. He bought it undersized at the time and not valid building so self created.

Ms Petelinz: You are asking to put residence on commercial undersized lot. It is not in compliance.

Mr. Wilson: I agree with reason stated and you are asking for more than half of what is required.

VOTE: In favor (aye) 0
 Opposed (nay) 5 Johnson, Guenste, Petelinz, Wilson, Raffo

DECISION:

Ms Raffo: The variance is denied.

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Triple S Land Developers Request for a variance of 249-19 (lot area)
1. area from 3 acres to 1.043 acres
(3-1-118)
Designated RA.

Ms Raffo: The applicant does not have their mailings. Therefore we are unable to open the Public hearing. It is necessary to have it republished. You will need to contact the Times Herald Record to pay for the republishing and the mailings will have to be resent.

J. Owen, Esq.: You can schedule it for July. You can set a public hearing date.

Ms Guenste: There is no application fee, however.

Ms Raffo: I Move to hold a Public Hearing for Triple S Land Development, LLC for July 9, 2007 at 7:30 pm or as soon there after as the matter can be heard; Seconded; All in favor; Motion carried.

Estate of Myra Baldwin Request for variances of 429-19(D)(1):
1. front yard from 60 ft to 46 and 42ft
2. side yard setback from 40ft to 30 and 31ft
3. side yard from 100ft to 74 and 65ft
4. lot area from 130,680 sq/ft to 22,601 and 20,277 sq/ft
5. lot width from 200ft to 106 and 110ft
6. lot depth from 300ft to 213 and 184ft
Property located 718 Scotchtown Collabar Road
(20-1-5)
Designated RA.

Ms Raffo: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 8:32 pm.

Ms Raffo: I Move to open the Public Hearing at 8:33 pm.

Ms Raffo: This is for the estate of Myra Baldwin.

Lou Powell, Eustace & Horowitz: This is 0.89 parcel on the east side of Silver Lake Scotchtown Road. It has 2 houses and the original built in 1940 and second in 1968. A permit was given for 2nd house and it met zoning at that time. In 1983 Mr. Baldwin died and it was subdivided subsequently for mortgage. The lots at that time were undersized and came to the ZBA granted variance and attorney did not go back to the Planning Board (PB) so subdivision was not filed.

She (Myra Baldwin) died in March 2006 and left one house to a daughter and other house to son and daughter on the 1984 subdivision. We have gone to the PB and they referred us here for variance. Lot area on both lots, width, front yard set back, one side yard and 2 side yards. Both houses have own well and septic.

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

Ms Raffo: Comments and question from the Board?

Ms Petelinz: I have been past the houses and am aware it is very small. It is small for one house and there are 2 houses on it. I have serious concern.

Mr. Wilson: I have same concerns and we don't want to set precedence for other house and understand the estate needs to be settled. Under circumstance don't think it is possible.

Ms Raffo: 2 houses on sub divided to accommodate family members who ever. To sub divide it - if someone goes they go to sell one or replace the house there is not septic allowed on the lot. There was no septic no matter and there are 2 houses there now. I can't in good conscious sub divide this and someone knocks it down and wants to replace. I will vote no.

Ms Guenste: Looking at the old zoning code, they used to allow in 1979 and 1980 allowed 2 units on one piece and were suppose to have individual yard requirements. Key was they had to be under common ownership. I mean – I look at it and it is undersized lot as it is and to make it 2 very small in RA it is opening up precedence and people come in say it was subdivided and I

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have this size and want to build on it. If it was self-created in '40 or 60 or now, I feel for the heirs of the situation but have to look what is best down the road. Someone may come in if it sell s and want to put in a 40 something house, we don't want that in RA.

Mr. Johnson: It is extreme variance for small lot and precedence becomes a problem and understand need for current situation but have to look to the future.

Lou Powell, Eustace & Horowitz: It has to take this process and they have to do what they have to do. If they followed through in 1984 it might be different.

Ms Raffo: I Move to close the Public Hearing at 8:49 pm; Seconded; All in favor; Motion carried.

Ms Raffo: I Move to grant the variances of 249-19(D)(1); Seconded.

VOTE: In favor (aye) 0
 Opposed (nay) 5: Johnson, Guenste, Petelinz, Wilson, Raffo

DECISION:

Ms Raffo: The variance requests are denied.

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Antonio Spadafora

Request for variance of 249-22 (lot area)
1. lot area from 18,750 sq/ft to 12,000 sq/ft
Property located at 46 Belmont Avenue
(75 – 6 – 7)
Designated R-1.

Ms Raffo: The applicant is not present.

PUBLIC HEARINGS (July 9, 2007)

FAIRWAYS WALLKILL, LLC.

Jennifer Van Tuyl, and J. O'Connell: We got variances for building styles you have seen in the past and it recently won the Hudson Valley Award for best design. We went to the Planning Board (PB) for minor site plan to make modifications on some of the units. The PB approved the minor site plan and because there are a number of buildings and the number of variances it is lengthy.

You have a map that is here (drawings). The way we presented it they are very much the same. What has changes is loop (drawing) the sharpness taken out and opened up for more space behind them and fewer buildings. We shaded in RED the building separation variance – buildings not taller than twice the width. The variances originally granted are shown. We need variances but the request for distance is less than half of what it was before. The buildings had height variances (7 buildings) and reduced it to 6. number of variance from 12 to 4 foot. A lot of change and in grand scheme it is less than before.

The next series of variances previously granted 7 duplex 12 foot variances as they are up-hill units, so we have revised plan and turned them into town house with 4 units each – disturbing less of the land now lessened the amount of building and pushed them back for more privacy. It is a wash on what variances are. They are close to same proximity.

The last set of variances previously granted is set back for decks – look at individual drawings, basically 9 – 10' variances, etc and if look at new map same location – so in same physical location but style of building changed from single to duplex buildings. It is the same number of units. We believe the determination by the PB was minor site plan amendment and the variances are similar to what was granted if not less and submitted in the form of alternative to interpret various previously granted even though change building numbers and in alternative if appropriate the issue of new variance to identify building number that is fine and ask schedule a public hearing.

Ms Raffo: It looks lovely and does anyone have questions?

Mr. Wilson: It will be individual houses?

Jennifer VanTuyl: Single family dwellings are in one section but what has happened the .. if you first drive in units on right 'master bedroom down' – these were run away best seller and they want this unit so trying to design met demand of the market and want to build them, but still have single dwelling in other area.

Ms Guenste: The height variances up to 47 – the old variance sheet- you not go higher you just move and redesigning.

Jennifer Van Tuyl: The chart was part of Board's decision in 2003. We marked that chart and wrote in the ones that replace that. Pg 1 giving up 4 variances to 47 and only have 1 left. You can read what you gave us and then what we are trading – not like that term.

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J Owen, Esq.: You can provide the Board with sheet where they new proposed variance will be.

Jennifer Van Tuyl: The requests for 249-22(7):

249-22(7)(i)

Heights variances Section T31 35 to 47ft

Section T26, 27, 28, 29 and 30 from 35 to 39ft

Section T32, 33, 34 and 35 from 35 to 47ft

249-22(7)(g)

Building Separation

T 15 and T 26 from 78ft to 72ft

T 27 and D28 78ft to 70ft

T 28 and T 31 94ft to 79ft

249-22(7)(i)

Rear yard

D 19, 21, 22, 29 and 30 from 50ft to 40ft

Ms Raffo: I Move to hold a Public Hearing for Fairways Wallkill, LLC. At 7:30 pm or as soon there after as the matter can be heard; Seconded; All in favor; Motion carried.

Ms Raffo: It is necessary to notify everyone within 300 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.

LeBAGH

Ms Raffo: Applicant nor representative were present.

TRIPLE S LAND DEVELOPMENT, LLC. *(from above)*

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.

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MEETING CLOSE

Ms Raffo: There being no further items to be presented to the Zoning Board of Appeals, I Move to close the Public Hearing at 9:09 pm; Seconded; All in favor; Motion carried.

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DECISION SHEET

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Donald & Kerri Malin

Request for a variance of 249-20 (rear yard):
1. set back from 30ft to 15ft to extend a deck extension
Property located at 37 Badami Drive
(84-2-20)
Designated R-2

DECISION: Variance granted

Leonard & Melissa Woods

Request for a variance of 249-22(D)(a) (side yard)
1. side yard from 20ft to 8ft
For construction of a deck 18 x 11ft
Property located at 45 Mayer Drive
(76-8-46)
Designated R-1.

DECISION: Variances granted

Lisette Mazariegos

Request for a variance of 249-22(D)(a) (set backs)
1. front yard from 35ft to 29.2ft
2. side yard from 20ft to 16.8ft
3. side yard from 20ft to 18.8ft
For construction of front porch
(77-7-9.2)
Designated R1.

DECISION: Variances granted

Carla Barbano

Request for a variance of 249-22 (use variance)
To permit operation of a dog kennel / boarding
Property located at 220 Prospect Road
(31-1-4)
Designated RA

DECISION: Variance granted subject to:

Maximum number of dogs not to exceed 45

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Brown / AAA Developers

Request for a variance of 249-26(D)
1. front yard set back from 35 to 13.5ft
2. rear yard from 40 to 10.0ft
3. area from 10,000 sq/ft to 7,433 sq/ft
(74-8-22) 377 East Main Street
Designated HC

DECISION: Variances denied

Triple S Land Developers

Public Hearing not conducted; no mailings; reschedule for 7/9/2007.

Request for a variance of 249-19 (lot area)
1. area from 3 acres to 1.043 acres
(3-1-118)
Designated RA.

Antonio Spadafora

Applicant was not present.

Request for variance of 249-22 (lot area)
1. lot area from 18,750 sq/ft to 12,000 sq/ft
Property located at 46 Belmont Avenue
(75 – 6 – 7)
Designated R-1.

Estate of Myra Baldwin

Request for variances of 429-19(D)(1):
1. front yard from 60 ft to 46 and 42ft
2. side yard setback from 40ft to 30 and 31ft
3. side yard from 100ft to 74 and 65ft
4. lot area from 130,680 sq/ft to 22,601 and 20,277 sq/ft
5. lot width from 200ft to 106 and 110ft
6. lot depth from 300ft to 213 and 184ft
Property located 718 Scotchtown Collabar Road
(20-1-5)
Designated RA.

DECISION: Variances denied

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Six Month Extensions:

WAL-MART STORES, INC.
(DBA Sam's Club)

Request for a 6 month extension on:
An area variance (249-8(A)(5) (accessory building in front
of primary building) for the installation of a gasoline filling
station pumps;
Property located at 300 N. Galleria Drive
(78-2-5.12); Designated .

DECISION: Extension granted