

TOWN OF WALLKILL ZONING BOARD OF APPEALS

MEETING

JULY 12, 2004

PRESENT:

J. Mattatall
W. Morgan
E. Raffo
R. Schoenberg
O. Smith, Chairperson
P. Thompson

Joseph A. Owen, Esq.

ABSENT/EXCUSED:

MEETING OPENING:

The monthly meeting of the Town of Wallkill Zoning Board of Appeals opened with the pledge to the flag, followed by roll call and presentation of the June 14, 2004 Meeting Minutes.

The Motion was made to approve the June 14, 2004 Meeting Minutes with the following changes:

Page 30–La Barge should be corrected to La Bagh.

The following hearings were Continued. Reviews made for August 9, 2004, and the Public Hearings conducted and voted upon as noted.

REORGANIZATION:

J. Mattatall was elected Vice Chairman. Motion made and seconded.

Schwab

Mr. Fusco: I am with Fusco Engineering representing the owners. This is Mr. Alfred Schwab, the owner. We're here this evening to request a variance for 660 Route 17M in Middletown. It is currently ECS Auto. Mr. Schwab has been there since 1972 and, as you can see on the plan there's an existing structure there which is where he has his business. We are looking to put an additional building at the rear. It's proposed for a motor vehicle repair. In that regard, it is again going to be utilized as part of the parcel that's existing in the present business. He sells auto parts. This is going to be to add on like bug shields and things of that nature. It's not for heavy motor vehicle repair as you would normally have. It's to put on items that are sold in his retail business and to install them onto the vehicles. Again, like I said, he's owned these premises since 1972. He does employ six to eight people. One of the things that we are looking at is a lot size variance. Under the old zoning, it would have complied. In this case, under the current zoning it's required that you have forty thousand square feet. The survey of the property reveals twenty eight thousand one hundred and ten so, we're looking for a variance of eleven thousand eight hundred and ninety square feet. In relationship to the frontage, the existing building is not going to be changed at all. There are no frontage changes however, just to be proper and in conformance there is a requirement of fifty feet for the front yard. We really only have fourteen feet. Again, this is an existing structure. It has not been altered. It is the same as it has been since 1972.

Mr. Schwab: Prior to that.

Mr. Fusco: Exactly. It is, however, in excess of fifty feet from the white line of the highway. So, it is setback very far from the highway but not the property line. The reason for that is there is an extra wide State right-of-way in the area due to the fact that the bridge abutment is immediately adjacent to it so, they made it wider. It is in excess of fifty feet from the highway. On the rear yard the requirement is a fifty foot setback and we're only able to do forty feet with the proposed addition that we are showing. Last, but not least, is the parking requirement which it's required that there be twenty eight spaces and we have twenty so, we're looking for a variance of eight. My application actually shows an error because we did right down that we're expected to have eight and we are expected to have twenty and the variance for eight. So, I ask that the record be corrected to reflect that. Again, he would like to expand his business. He's been there in excess of thirty years and he's been an asset to the community in relationship to the business and jobs and he would just like to upgrade his facilities. We have been to the Planning Board and the Planning Board did refer us to the Zoning Board of Appeals. We still have an active file. In fact, we have a work session planned in September, I believe so hopefully we satisfy your requirements and we can go back to the Planning Board. We're available for any questions you may have.

Mr. Smith: It fact it does say proposed motor vehicle repair.

Mr. Fusco: Right.

Mr. Smith: You're talking about (not clear).

Mr. Fusco: Not at all. Maybe you can tell him.

Mr. Schwab: We sell add on at the market products.

Mr. Smith: And this is East Coat Speed?

Mr. Schwab: Yes. We're not doing any installing or performance parts for engines. We're not going to do any engine work. It's just the dress on or accessory items that we do sell that the customers request us to put on.

Mr. Fusco: One of the reasons, we really didn't want to put that label on there but under the Town zoning there really wasn't any choice. We met with Mr. McGoey, the Planning Board Engineer, and tried to figure out is there some other language that we could use because it's really not a motor vehicle repair. We really didn't have any other alternative because there was no specific language for minor motor vehicle repairs or what ever the case may be. So, we have to sort of stick with that label but that is not the intent.

Mr. Schoenberg: What kind of waste products may be coming out of there?

Mr. Schwab: It would be strictly the boxes from the parts coming out. The parts we install are strictly new and they all come boxed. The only waste product would be the boxes itself.

Mr. Schoenberg: No fluids?

Mr. Schwab: No fluids.

Mr. Fusco: Just the cardboard packing and the styrofoam.

Mr. Smith: I Move to hold a Public Hearing on August 9, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard. All in favor; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor 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.

Wolf

Mr. Wolf: I'm looking to put an addition on a residential house in Bloomingburg. I have a few more of the survey maps if I may give them to you.

Mr. Smith: So, you're Mark Wolf?

Mr. Wolf: Yes. The problem I'm having is with the setbacks, the front yard setback. I guess since I built the house they changed it from fifty to sixty feet. When I started to put the addition on I measured from the road and the road if you look at the maps it is eighty one feet. But I guess you're looking at the front yard down to the street.

Mrs. Thompson: When did you buy this property?

Mr. Wolf: Twelve years ago.

Mrs. Thompson: Twelve years ago.

Mr. Wolf: Yes.

Mrs. Thompson: Can you get into it from that corner?

Mr. Wolf: Ora Park, yes.

Mrs. Thompson: Ora Park runs into your property?

Mr. Wolf: It's actually a semi-circle and then there's a little branch that comes off of it and it just stops.

Mr. Smith: The side with the graveled drive is your front yard?

Mr. Wolf: I'm sorry.

Mr. Smith: The side with the graveled drive, apparently you're making that the front yard?

Mr. Wolf: Yes.

Mr. Smith: There seems to be some sort of right-of-way in the rear as well?

Mr. Wolf: The right-of-way in the rear where that chain link fence that drops off. There's a hill that runs down to the Shawangunk River to the bottom. There is no road down there. There's nothing but growth and trees and dirt.

Mr. Smith: It's never opened?

Mr. Wolf: No. Also, in the front we're showing the right-of-way that runs in between mine and the other properties.

Mr. Smith: Right.

Mr. Wolf: That also is just trees.

Mr. Smith: You come in from Ora Park Circle but then you show the driveway going across the Ott's up there?

Mr. Wolf: Yes, that's my mother-in-law.

Mr. Mattatall: Are you aware that could be a problem at some point?

Mr. Wolf: How could it be a problem as long as she owns that property.

Mr. Mattatall: If I came off of Route 17, I would just keep going straight and that's where your property starts?

Mr. Wolf: Across from the cemetery is Ora Park Circle. You want to take the second entrance closer to Bloomingburg and not go left around the circle but straight back and you will come to me.

Mrs. Thompson: Are we going for an interpretation or a variance?

Mr. Smith: Front yard from sixty to fifty.

Mrs. Thompson: The application indicates an interpretation and/or variance.

Mr. Wolf: The question was if it was measured from the corner of the road.

Mr. Smith: It is from the road frontage. Oh, I see. You're talking about from the corner?

Mr. Wolf: Yes.

Mr. Smith: I don't think so. We still want a setback from others. This will be your front property. This looks like a ten foot right-of-way here?

Mr. Wolf: Yes.

Mr. Smith: I would say you need a variance. So, it will be front yard from sixty feet to fifty two feet.

Mr. Smith: I Move to hold a Public Hearing on August 9, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard. All in favor; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor 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.

Jasu Padhya

Mrs. Padhya: I thought my surveyor would be here but he's not here and I only have one copy. I don't know if the Board has it.

Mrs. Thompson: We have it.

Mrs. Padhya: You have it, okay.

Mr. Smith: You're applying to use your proposed addition but the variance. I know what you're talking about. That little corner on Freezer and Silver Lake Scotchtown Road.

Mrs. Padhya: Yes.

Mrs. Thompson: Do they understand about the variance? Who sent them here?

Mr. Owen, Esq.: It looks like from the application that the Planning Board sent them here. They would need a use variance and would ultimately require other parking and different issues like that. I can't really tell from the application but it looks like the Planning Board sent them here.

Mrs. Padhya: It says twenty seven parking but we have twenty eight.

Mr. Smith: Did the Planning Board send you here?

Mrs. Padhya: I have no idea but he was supposed to be here and he's not here.

Mr. Smith: Who?

Mrs. Padhya: Mr. Yanosh.

Mr. Smith: Is he coming tonight?

Mrs. Padhya: He's supposed to.

Mrs. Thompson: You're not changing the size of the building or anything?

Mrs. Padhya: No, not now. We just want the pizzeria.

Mr. Smith: The map you have shows . . .

Mrs. Padhya: Yes. We don't want to do right now, no. We don't want to do anything right now but in the future, maybe.

Mr. Smith: To go for a use variance, to get one approved, is difficult. It's very difficult. You're going to need someone to help you. You have to prove certain things that are sometimes difficult. For now I think you should wait. Would you rather wait to see if he shows up tonight?

Mrs. Padyha: Okay.

Mr. Smith: I will call you again later. Silver Lake Deli come back up. I see Mr. Yanosh has not come in. I will tell you that a use variance is a very difficult variance to get. You have to prove it to us. It is not an easy variance and can be very difficult to obtain. You may need professionals to help you. Do you want to continue?

Mrs. Padyha: Yes.

Mr. Smith: Mr. Owen?

Mr. Owen: They said they want to continue. Schedule them for a Public Hearing.

Mr. Smith: I Move to hold a Public Hearing on August 9, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard. All in favor; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor 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.

Sky Ridge

Mr. Barone: We're here for an area variance. I am representing the applicant. What we have is a lot which was carved out of an existing parcel in or about 1965 and it's never been built on as far as we know. A few years ago it went up for a tax sale. My clients purchased it. They want to convert it into a build-able lot through the acquisition of area variances for the lot size and side yard requirements.

Mrs. Thompson: How do we find this parcel?

Mr. Barone: You mean to drive out there and locate it?

Mrs. Thompson: Yes.

Mr. Barone: There is a location map which shows it on what I believe to be Highland Lake

Road.

Mrs. Thompson: That, we can find.

Mr. Barone: I've never been there, frankly. But it does show next to it to the South is one existing dwelling with a stone wall that runs across our property line. I don't know to the North of it what improvements. If you want I can ask my client to go out there and post some type of sign.

Mr. Morgan: Ask them to post 145 Highland Lake Road.

Mr. Barone: We will do something like that within the next week.

Mrs. Thompson: The soils?

Mr. Barone: Beg your pardon?

Mrs. Thompson: I wish they had the soils listed as the numbers that are in our code book.

Mr. Barone: I see he went by the type and he didn't give you the code number. I will have him provide that for you. I know the plan is fully engineered. The soils did percolate well. They were both twenty minute percolation's.

Mr. Smith: We will need somebody to confirm the soils according to our zoning.

Mr. Barone: Okay. By the type number because I know he does provide them.

Mr. Smith: Is anyone here from Pietrzak & Phau?

Mr. Barone: Will they come? Actually I have an engineer here from their office tonight but I don't think he's that familiar with the plan. I will have someone here who is familiar with it at the time of the hearing.

Mr. Siemers: I am with Pietrzak and Phau. Mardin is a 40B. I don't see the soils lines on the map at the moment. We can put those on. MdB is definitely a 40C soil. I believe your minimum acreage on that soil is two acres at the moment in the RA zone.

Mr. Smith: I Move to hold a Public Hearing on August 9, 2004 at 7:30 P.M. or as soon

thereafter as the matter can be heard. All in favor; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor 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.

Miller

Mrs. Miller: With me is Bruce Miller. We're looking to put an addition on the house so that my mother can come and live with us. We're looking for a lot area variance and a side yard variance. Because our house is on a corner, we have two front yards.

Mrs. Thompson: (Not clear).

Mrs. Miller: No. Right across the street from there.

Mrs. Thompson: What will be in the addition?

Mr. Miller: My mother-in-law is going to come and live with us.

Mrs. Thompson: What will it have, one-bedroom?

Mrs. Miller: Yes. The first floor is going to be . . .

Mrs. Thompson: An apartment?

Mrs. Miller: No it's not an apartment really. It's going to be a large bedroom with her own bathroom and the upstairs will have another bedroom and a bathroom.

Mrs. Thompson: Kitchen?

Mr. Miller: No kitchen.

Mrs. Miller: She will be more than happy to have me do the cooking. After eighty two years

she deserves it.

Mr. Smith: You're doing two additions. I understand you need an area on one side.

Mr. Miller: Yes, just to increase the size of the sunroom a little bit so there's a little bit more of a . . .

Mrs. Miller: It brings the dining room out to the existing deck.

Mr. Smith: I Move to hold a Public Hearing on August 9, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard. All in favor; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor 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.

Rivenburgh

M. Siemers: I am with Pietrzak & Phau. Tonight we're here looking for an area variance. At the moment we're in front of the Planning Board with a four lot subdivision. At the moment there is an existing two-story home with three existing barns on the property located on Shaw Road.

Mrs. Thompson: The number for Shaw Road?

Mr. Siemers: The property you're looking for?

Mrs. Thompson: On Shaw Road.

Mr. Siemers: Tax Map Number or mailing.

Mrs. Thompson: A house number on the mail box.

Mr. Siemers: I'm sure it does but I don't know. I can provide you with that information in a

letter. I thought my client was going to be here tonight. He would know that information. He hasn't come yet I can provide you with a letter.

Mr. Smith: Shouldn't there be a number on the mailbox?

Mr. Siemers: Is there someone I can get in touch with in the next couple days?

Mr. Smith: Mrs. Thompson.

Mr. Siemers: Okay.

Mrs. Thompson: I'm a little confused. Here's Shaw Road and here's Route 302. Are you on both Shaw Road and Route 302?

Mr. Siemers: If you look at the location map in the upper right hand corner, down in the left hand corner is the intersection of Baker Road and Shaw Road and Route 302.

Mrs. Thompson: Why did you give us Route 302?

Mr. Siemers: I was actually trying to give you the intersection with a major road. I figured Route 302 would be a larger road than Baker Road.

Mr. Smith: At any rate, you say you want an area variance. This is going to be for each lot?

Mr. Siemers: No. What we're doing here, all the lots right now meet the zoning code. The area variance is in regard to the three barns located on lot #3. My client informs that they're very nice barns, fairly old. They've been restored and have received new roofs within the last ten years. The zoning code doesn't allow an accessory structure in the front yard and it also only allows one accessory structure. The way the lots lay out with lot with and lot area they would have to be located on lot #3. We're proposing to set the proposed houses back off the road and in behind the barns.

Mr. Smith: That's what you're hear for.

Mr. Siemers: We would like to keep the barns.

Mr. Smith: The barns which you are considering accessory buildings in front of the residence for lot #3?

Mr. Siemers: Right. We're also labeling these barns for residential storage only and we would like to keep the barns. If it's not possible to get a variance for this, the barns will be demolished but we would like to keep the barns at the moment.

Mr. Smith: Are you going to need a setback on the one existing barn that's about nine feet off the line?

Mr. Siemers: No. An accessory building has a five foot side yard.

Mr. Mattatall: The driveway between the barns (not clear).

Mr. Siemers: There are a few driveway cuts in off the road here. I believe this is all dirt here, then there is an existing lane going back. It's not very defined.

Mr. Mattatall: And you intend to keep the existing house?

Mr. Siemers: Right.

Mr. Smith: The way you should word this is proposed lot #3 subdivision of Rivenburgh because the variance really comes into play once you have the subdivision approval.

Mr. Smith: I Move to hold a Public Hearing on August 9, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard. All in favor; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor 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.

PUBLIC HEARINGS

EDWARD & GAIL BEGLE: Request for a variance of 249-19-D (rear and side yard setbacks) for addition to house; Property located at 37 Bendlin Lane (Sec. 32, Block 7, Lot 8); Designated RA

Mrs. Thompson: Do you have the mailings?

Mr. Begle: Yes.

Mrs. Thompson: 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 at 600 Route 211 East, Middletown, New York, on the 12th day of July, 2004, at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the application of Edward & Gail Begle, 17 Bendlin Lane, Middletown, New York for a variance of the Zoning Ordinance Section 249-19-D (rear and side yard setbacks) for addition to home) for their property (33-7-8) located at 37 Bendlin Lane and designated RA. All parties of interest will be heard at said time and place. /P. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing at 8:16 P.M. Please state your name and present the reason for your request.

Mr. Begle: My wife and I live at 37 Bendlin Lane. We're looking to put an addition on for an additional bedroom.

Mrs. Begle: No. To increase the size of the living room and to then add to the present bedroom. We're not adding an additional bedroom. We're just taking the existing bedroom, increasing the living room and adding on to the master bedroom.

Mr. Schoenberg: The variance I believe is for the rear and the side setbacks?

Mr. Smith: Correct. The rear setback from seventy to twenty one feet and a side yard setback?

Mr. Begle: I believe on the one side we need fifteen feet.

Mr. Smith: I wrote it down. I added forty to twenty one but I don't think that's right. It's forty to 15.4 I guess.

Mr. Begle: Right.

Mr. Smith: Are there any comments from the Board?

Mrs. Begle: We did speak to the Bendlin's and they have no problem at all.

Mr. Schoenberg: I think it's appropriate and fits in with the house. It is a nice little area.

Mrs. Thompson: Your son came out when I was there.

Mrs. Begle: I know. He told me.

Mr. Begle: I hope he was polite.

Mr. Smith: Are there any questions from the Public? I'm opening it up to the Public. Your going to extend the deck or the wood porch on the one side. You're not extending that at all towards a side line?

Mr. Begle: No.

Mr. Smith: You're just bringing it forward.

Mr. Begle: Correct.

Mr. Smith: Since there is no one here that will object of your neighbors I don't see where this is going to be any kind of a major variance. I think it is in keeping with the neighborhood. You have a nice little house and just want to make it a little bigger. It's understandable.

Mr. Begle: We fell in love with the house in the neighborhood.

Mr. Smith: I don't think it's any kind of major change to the neighborhood at all. I don't have a problem with it. Anyone else? I Move to close the Public Hearing at 8:20 P.M. I Move to grant the applicant the following variances: 249-19-D-1 seventy feet to twenty one feet for the rear yard; and side yard forty feet to 15.4 feet. Seconded.

VOTE:

In favor (Aye)	6
Opposed (Nay)	0

DECISION:

Mr. Smith: The variances are granted; please see the Building Department.

LEWIS SIGN COMPANY: Request for a variance of 249-11-N for sign; Property located at 295 Route 211 East (Home Healthcare Store); (Sec. 50, Block 1, Lot 30.1); Designated HC.

Mrs. Thompson: Do you have the mailings?

Mrs. DiNunezio: Yes.

Mrs. Thompson: 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 at 600 Route 211 East, Middletown, New York on the 12th day of July, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of Lewis Sign Company for the Home Healthcare Store, 295 Route 211 East, Middletown, New York for a variance of the Zoning Ordinance Sec. 249-11-N (sign) for their property located at 295 Route 211 East and designated HC. All parties of interest will be heard at said time and place. S/P. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for July 12, 2004 at 8:22 P.M. Please state your name and present the reason for your request.

Mrs. DiNunezio: We would like to add two signs to the side of the building. One four by six that states.

Mr. Smith: I do believe the existing signs are coming down?

Mrs. DiNunezio: Yes. We will be replacing them. There's forty seven and a half feet of signage there now. We're going to be putting up forty six and a half. There will be two signs. One that says Home Health Care, like the sign on the front of the building and then they chose to put what they have on the side so when you drive in you're not stopping in the middle of Route 211 just to read what they have. That would be a four by six sign and the one on the top is eighteen inches tall by sixteen feet wide.

Mr. Smith: Run that last little bit. Six by twelve Home Health Care with the telephone number and the other is three by eight.

Mrs. DiNunezio: No. Those are for the front. It's the side of the building. It's at the bottom, I believe. On the first page, on the bottom. You've got it. One's four by six that says

medical supplies, equipment, diabetics, ostomy and the Home Care with the logo.

Mr. Smith: And where are you going to have (not clear).

Mrs. DiNunezio: Those were the front. We were covered on the front. I have permit numbers for those.

Mr. Smith: You're going to be over on your . . .

Mrs. DiNunezio: Side signs.

Mr. Smith: An aggregate sign.

Mrs. DiNunezio: Right. There's a pylon and . . . It's forty six and a half feet. We were sixty square feet between the pylon and the Worker's Warehouse. That's what we were allowed.

Mr. Smith: You're allowed sixty square feet and you're forty six square feet over.

Mrs. DiNunezio: Right.

Mrs. Thompson: What was the sign of the previous signs?

Mrs. DiNunezio: They were forty seven and a half.

Mrs. Thompson: What color?

Mrs. DiNunezio: I believe he has the color sheet. They're burgundy for the logo and black and white.

Mr. Smith: Are there any questions from the Public on the Home Health Care store? Anyone?

Mrs. Raffo: The footage of your signs from the previous?

Mrs. DiNunezio: We're a foot under.

Mr. Smith: That's how I see it. It goes along with the commercial area. It's certainly not a change to the neighborhood because they're roughly the same size that's there.

Mr. Smith: I Move to close this Public Hearing at 8:26 P.M. I Move to grant the applicant the following variances: Under Section 249-11-N aggregate sign footage allowable on the building and for a sign on the wall facing the secondary access, the total variance is forty six and a half feet over. Seconded.

VOTE:

In favor (Aye)	6
Opposed (Nay)	0

DECISION:

Mr. Smith: The variances are granted; please see the Building Department.

JRJ HOMES: Request for a variance of 249-19-D (lot depth); Property located at 238 Ridge Avenue (Sec. 33, Block 1, Lot 44.221); Designated RA

Mrs. Thompson: Do you have your mailings?

Mrs. Szeto: Yes.

Mr. Smith: Before we open this, I couldn't find it. I didn't see the trailer.

Mrs. Szeto: It's now officially gone. We got rid of it this morning.

Mrs. Thompson: There's no street sign out there.

Mrs. Szeto: There's one but the tree blocks it.

Mr. Schoenberg: Put a sign by the driveway.

Mrs. Szeto: Right. With the leaves growing it's hard to see but we finally got rid of that trailer this morning.

Mrs. Smith: I thought it was on the opposite side of the street.

Mrs. Szeto: The tax map is really difficult to go by because it's the corner of Wallkill where it becomes Mount Hope. So, it's very difficult to go by the tax map because we even had a hard time identifying it.

Mrs. Thompson: 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 at 600 Route 211 East, Middletown, New York on the 12th day of July, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of JRJ Homes, P.O. Box 332, Warwick, New York for a variance of the zoning ordinance Sec. 249-19-D (lot depth) for their property (33-1-44.221) located at 238 Ridge Avenue, Town of Wallkill and designated RA. All parties of interest will be heard at the said time and place. S/P. Thompson, Secretary.

Mr. Smith: I Move to open this Public Hearing for July 12, 2004 at 8:30 P.M. There is one thing, we need the soils.

Mrs. Szeto: I dropped off the soils to you folks about two weeks ago after the meeting.

Mr. Smith: We don't have it.

Mrs. Thompson: Who did you give it to because that could be why we didn't get it?

Mrs. Szeto: I dropped it off one evening close to five and they gave it to one of the secretaries. The topography is being done by Weeden Surveying. He is a little backlogged and is going to try to have the topography to us by tonight but he wasn't able to do that.

Mr. Smith: We can go ahead but until we get the soils we will have continue this next month.

Mrs. Szeto: I dropped them off. Nobody has them?

Mr. Smith: We don't know what the soils are. We can take care of anything else at this time. You are going for an area variance. Depending on the soils you might need a lot size variance, maybe not.

Mrs. Szeto: Most of it is clay.

Mr. Smith: Clay is not good.

Mrs. Szeto: I didn't bring my soils with me because I dropped it off. I don't even think I made a copy of it.

Mr. Smith: In the meantime, is there anyone here from the Public for JRJ Homes? Please state your name.

Mrs. Mikulski: I live on 232 Ridge Road. There are numbers on the road. They're 911 numbers. If you call 911 and tell them you have a problem they won't find you, just like you people couldn't find it. Apparently we don't exist. I'm just here to, I live further than the three hundred feet so I didn't get a notice but I'm the one who was complaining about the trailer that was there. Did any of you see that trailer? It's gone today. I watched them take it out. I was clapping. My reason for being here, what size houses, are you only putting one house in?

Mr. Smith: It will only be one house but right now they're here to get approval to make it a legal building lot.

Mrs. Mikulski: The reason being is for the setbacks?

Mr. Smith: Yes.

Mrs. Mikulski: I had to do that thirty years ago when we built our house. I'm all the way at the end. When you came all the way down the road you'll probably turn around in my driveway. That's what I had to have thirty years ago. We had to do a setback variance. I was just making sure that it was only going to be a one family house. That's all. It will be a nice improvement on the road. It was really bad.

Mr. Schoenberg: I'm curious. What is the square footage of your house?

Mrs. Mikulski: It's probably fourteen hundred square feet I think, because we just put that addition on. It was a forty foot ranch. That was our starter home thirty years ago and we just put an addition on. I think it's up to fourteen hundred square feet now. I'm just glad to hear that we're going to have niceness up there to get rid of the trailer. I was just trying to make sure it was a one family home.

Mr. Smith: Is there anyone else here for JRJ Homes? Are there any questions from the Board? The main variance that you're requesting is minor. Generally I don't have a problem with that because just looking at the tax maps and the lot sizes, they're all about the same size. I think we're going to have to continue this for another month until we get the information on the soils.

Mrs. Szeto: Did I address the right person, the Planning Board Secretary?

Mr. Smith: I don't know.

Mrs. Thompson: No. It was probably put on her desk.

Mr. Smith: This is the Zoning Board of Appeals. You sent it to the Planning Board.

Mrs. Szeto: That's probably what happened.

Mr. Smith: I realize it's another month but we're going to continue this to August 9, 2004 and we will probably get you in a little sooner in the evening.

Mrs. Szeto: If I dropped it off to the Board on the 9th, would that be helpful to you?

Mr. Smith: I think you better get it in to us again.

Mrs. Szeto: Is there a fax number at all?

Mrs. Thompson: No. Go to the Town Clerk and have them forward it to the Zoning Board of Appeals.

STANLEY WILSON Request for a variance of 249-22-D (rear and side yard setbacks); Property located at 24 Evan Court (Sec. 76, Block 8, Lot 24); Designated R-1

Mr. Smith: Do you have the mailings?

Mrs. Thompson: 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 at 600 Route 211 East, Middletown, New York on the 12th day of July, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of Stanley Wilson, 24 Evan Court, Middletown, New York for a variance of the Zoning Ordinance Sec. 249-22-D (rear yard and side yard setbacks to build a deck) for his property located at 24 Evan Court and designated R-1. All parties of interest will be heard at said time and place.
S/P. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for July 12, 2004 at 8:38 P.M.

Mr. Wilson: I just looking to extend my deck by ten feet by ten feet.

Mr. Smith: You're going to extend it?

Mr. Wilson: Yes.

Mr. Smith: Or, take off what you have and re-build?

Mr. Wilson: I'm going to extend it to what I already have. I'm actually going to do a step-down so it's fancy.

Mr. Smith: These are town homes. Are you allowed to do this?

Mr. Wilson: Yes. There are other homes in the area with larger decks.

Mr. Smith: When I was there I did look around quickly just in that courtyard I will call it and I only saw one.

Mr. Wilson: There is one on the corner and one on the hill right opposite that and is I believe twelve by twelve.

Mr. Smith: I don't see any change to the character of the neighborhood. I don't consider it substantial by any means.

Mr. Mattatall: It's in keeping with the neighborhood. There are other decks throughout that area.

Mr. Wilson: They actually changed the type of the building half way through in that area. It wasn't all built at one time. The developer stopped half way through somewhere along the line.

Mr. Smith: Economic times. Anyone else from the Board have comments? Is there anyone here from the Public on Mr. Wilson of Evan Court? I will close the Public Hearing at 8:40 P.M. I Move to grant the applicant the following variances. 249-22D-A (rear yard setback) from thirty feet to twenty eight feet and (side yard setback) from fifteen feet to 9.5 feet for an enlarged deck. Seconded.

VOTE:

In favor (Aye)	6
Opposed (Nay)	0

DECISION:

Mr. Smith: The variances are granted; please see the Building Department

PATRICK BOWIE

Request for interpretation of pre-existing use. Property located at 147 Bert Crawford Road (Sec. 50, Block 1, Lot 57); Designated R-1

Mr. Smith: Do you have the mailings?

Mrs. Thomson: 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 at 600 Route 211 East, Middletown, New York on the 12th day of July, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the application of Patrick Bowie, 655 McLean Avenue, Yonkers, New York for an interpretation of pre-existing use for his property located at 147 Bert Crawford Road, Middletown, New York and designed R-1. All parties of interest will be heard at said time and place. S/P. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for July 12, 2004 at 8:43 P.M.

Mrs. Sugarman, Esq.: Mr. Bowie purchased this property at 147 Bert Crawford Road. He closed on March 31, 2003. During the process of buying the property obviously a title search was done and I've provided a letter initially from Mr. Steenrod as to the search of the property. His comments were no Certificate of Occupancy because of the age of the building and that there was a single family residence built in 1900 and in 1950 a single family residence with garage and three sheds. As I said, he closed March 31, 2003. On April 24th Mr. Steenrod wrote to Mr. Bowie telling him that the use of the rear structure of the dwelling had expired. He then issued him certain building code violations on the violation. We have been in front of Judge Freehill for several months on that matter. The case came up to trial and Mr. Steenrod told me that regardless of what Judge Freehill decided at the trial his position was that the residence had expired and we needed to go to the Zoning Board of Appeals. He would not issue a Certificate of Occupancy for the rear building. I provided to the Board a letter from the tenant. I do have the original if you would like that for your file indicating that he was a tenant in the apartment from 2000 to May of 2003 which was two months after Mr. Bowie purchased the property. I also provided you with pictures and the original Assessor's record which indicate that it was a garage with an apartment over it and just the pictures of how it looks now to show you the work that Mr. Bowie had done to improve the look of the property.

Mrs. Thompson: Is the property occupied?

Mr. Bowie: Yes.

Mrs. Sugarman Esq.: Well, the front has been occupied. The back is not occupied because Mr. Steenrod put a Stop Work Order on it.

Mrs. Thompson: Did you sell the front then?

Mr. Bowie: No.

Mrs. Sugarman Esq.: It's all one piece. I also have a letter from Mr. Kicklak who was the prior owner and paid the Orange & Rockland bills from September of 2000 to when he sold it in March of 2003.

Mr. Smith: You submitted this with an affidavit?

Mrs. Sugarman Esq.: Yes I did. I notarized it. Mr. Torres brought it to my office. He's the one who wrote it. He wanted it sworn to and I notarized it for him.

Mrs. Thompson: Is it vacant?

Mrs. Sugarman Esq.: Well, the back apartment has been since Mr. Steenrod told him that he could not use the apartment and we have been in Court since that time.

Mr. Bowie: This has been over a year.

Mrs. Sugarman Esq.: So, it's the conduct of Mr. Steenrod from the time he issued that letter that prevented Mr. Bowie from renting it and actually completing the work.

Mr. Smith: The back building has two floors to it?

Mrs. Sugarman Esq.: Correct.

Mr. Smith: What's on the first floor?

Mrs. Sugarman Esq. It's a garage. They are not using the garage now because he won't let any occupancy of the building.

Mr. Smith: What's on the second floor?

Mrs. Sugarman Esq.: It's an apartment.

Mr. Schoenberg: What's in the apartment?

Mr. Bowie: Two bedrooms.

Mr. Schoenberg: Anything else?

Mr. Bowie: Kitchen, bathroom, full bath and the living room.

Mrs. Sugarman Esq.: I do have other pictures.

Mr. Bowie: That's always been there for years.

Mrs. Sugarman Esq.: And, that's where Mr. Torres lived.

Mr. Bowie: Right. The plumber ripped out the old plumbing system. Mr. Steenrod was there that day when he put the new boiler in. All he did was rip out the old one and put a new one in.

Mrs. Sugarman Esq.: I understand that it hasn't been occupied for an amount of time but that's because Mr. Steenrod prevented him from.

Mr. Bowie: It used to be two red old houses.

Mrs. Thompson: It wasn't finished?

Mr. Bowie: All the work stopped at that point.

Mrs. Sugarman Esq.: Since we were in Court starting in October.

Mr. Bowie: All the work stopped.

Mrs. Sugarman Esq.: Actually the Stop Work Order was issued sometime in September.

Mr. Bowie: We plan to uniform everything just like the two houses. New roofs, new siding, etc.

Mr. Smith: Is there anyone here from the Public? Please state your name.

Mrs. Singer: I'm the Secretary of the Condominium Board just above this piece of property. We received the notice in the mail and we just came in to understand what was happening here. We were lead to believe that you wanted to put some sort of business in there?

Mr. Bowie: No. It's an apartment.

Mrs. Singer: It's an apartment.

Mr. Bowie: It's an apartment.

Mrs. Singer: It's totally residential?

Mr. Bowie: Totally residential.

Mrs. Singer: There's no place for real parking or trucks. We were concerned if it was a business would things spill out into our lake or anything like that?

Mr. Bowie: No. It's apartments.

Mrs. Singer: So, it's not a business. It's just a living residence, is that correct?

Mr. Bowie: That's correct. Two bedrooms, kitchen, bathroom, living room.

Mrs. Singer: Okay. Thank you.

Mr. Bruce: I'm from Lake Ridge Drive also. I just wanted to get some clarification. From what I understand they want this area re-zoned?

Mr. Smith: No.

Mr. Bruce: What is it zoned for now? I'm new here. I just moved up from Westchester.

Mrs. Sugarman Esq.: I believe it's R-1.

Mr. Smith: Single family residence.

Mr. Bruce: Oh, so it is zoned and will stay as that?

Mr. Smith: They're here for an interpretation of two structures on the property. One is clearly a house. The other structure is . . .

Mr. Bruce: From what I understand they want to fix it up and things like that.

Mr. Bowie: It is fixed already.

Mr. Smith: They want clarification as to whether they've had a pre-existing use as a separate structure continuing with another dwelling unit.

Mr. Bruce: And it will stay as R-1. It's not going to change the zoning?

Mr. Smith: It's going to stay R-1. It's the use of that particular lot. It's a small lot.

Mr. Bruce: Yes, I know. It's right off my backyard.

Mr. Smith: Okay. Very small.

Mr. Bruce: As long as it stays residential because we were lead to believe that it was going to change from R-1 to something.

Mr. Smith: It was a question as to whether anyone can live in the garage with an apartment.

Mr. Bruce: Fine. I have no problem with that.

Mr. Smith: Anyone else? I don't know. The letter you submitted indicates that it was occupied until May of 2003. So we're over a year, right there.

Mrs. Sugarman Esq.: Yes, I understand that but we're over the year because Mr. Steenrod had told them that they couldn't use the structure as an apartment. It's not that they let it go and they weren't going to use it. It was the conduct of the Building Inspector that caused it to be vacant for the year.

Mrs. Thompson: Why did he say it was vacant?

Mrs. Sugarman Esq.: I don't know why Mr. Steenrod made that decision. Perhaps he didn't know that Mr. Torres lived there. Mr. Torres lived there for three years. He might not have been there every day and perhaps he wasn't there when Mr. Steenrod was there. Perhaps, because the apartment was in such an outwardly bad shape itself.

Mrs. Thompson: It's still been vacant over a year.

Mrs. Sugarman Esq.: Yes. Because of the act of Mr. Steenrod. That's the only reason that the residence was not occupied because they were prevented from completing their renovations and putting someone in there. He stopped them.

Mr. Bowie: I was given a Stop Work Order.

Mrs. Sugarman Esq.: As you drive by, you can still see it posted in the window upstairs.

Mr. Caricic: I'm Mr. Bowie's partner. We acquired the property to rehabilitate it as a business and I submit to the Zoning Board of Appeals that had this property not been zoned the way we were saying but the apartment over the garage was a second dwelling on the property, we would never have acquired the property nor would we have invested thousands of dollars to rehabilitate a garage that we would not be able to endow.

Mr. Smith: What were you told at closing?

Mr. Bowie: That it was two apartments.

Mrs. Sugarman Esq.: That's why I submitted to you the search that the Title Company did. Mr. Steenrod signed the letter in I believe in March that it was a garage with an apartment and that's what the Assessor's records say.

Mr. Bowie: We put on new vinyl siding, new roofs. We purchased new windows. Had that not been the case from the very start, I never would have done that to the dwelling in question.

Mr. Mattatall: You purchased this in March 2003?

Mrs. Sugarman Esq.: It closed March 31, 2003.

Mr. Mattatall: I assume you did a pre-inspection of this property?

Mr. Bowie: Yes.

Mr. Smith: What did your lawyer tell you?

Mr. Bowie: He told me exactly what he saw on the title search. It was two apartments.

Mr. Caricic: We were told that the property had two rentable apartments on it.

Mr. Schoenberg: Who was the Attorney?

Mr. Bowie: Mr. Napolitano.

Mr. Smith: Anyone else have comments?

Mrs. Thompson: I still say it's been over a year.

Mrs. Sugarman Esq.: The only response I would have to that is they couldn't do it because Mr. Steenrod told me that they couldn't.

Mr. Bowie: I was given a Stop Work Order.

Mr. Caricic: Even during the process of rehabilitating the apartment at one point the light was left on overnight by our crew and Mr. Steenrod came back the following day and said that if he finds anybody living there in violation of his order, that we would be arrested because he would call the police and have us arrested. That's why we were not able to have anybody occupying the apartment. We were finished with the apartment well in advance of the year. The renovations took about a month for the house.

Mrs. Sugarman Esq.: In a letter that he wrote for them in April of 2003, he said the rear structure cannot be considered a dwelling. It has not been used as such for years and has lost any pre-determination. That was a month after the closing, not even a month and a half after he wrote the letter to the title company that said the use was a garage with an apartment. I understand that the apartment has been vacant and had we gone perhaps immediately instead of answering a motion in Town Court on the violation we might have been here earlier.

Mr. Smith: They say a year. The house was built about 1900, single family residence. 1950 single family residence with garage.

Mr. Bowie: That's the second structure.

Mr. Smith: It doesn't say anything about an apartment when he issued that.

Mrs. Sugarman Esq.: Yes but when you look at what he would have inspected or quoting Mr. Steenrod what the girls looked at when they typed this because he signed it would be that the Assessor's record which you have also that states on page #2 and shows the back apartment, garage with apartment. That's written on top. It clearly says that it has baseboard heat, two bedrooms, kitchen, bathroom, living room. It's certainly described in all of the Town of Wallkill paper work that it's a garage with an apartment in poor condition which is obviously even because of what it looked like in this picture.

Mr. Smith: Am I correct in saying that even though the Assessor's records show the apartment and garage, those records have no bearing on whether there's a violation or not?

Mr. Owen Esq.: This is part of the interpretation. What you have to determine is, I think they're argument is that since the beginning of the code this garage has been used as an apartment continuously since before the code went into affect in the Town of Wallkill. I don't think they're being taxed on two residences.

Mr. Smith: They are being taxed on the main house and a garage with an apartment.

Mr. Bowie: Correct.

Mr. Smith: I don't know that tax records can be used to determine if there's a violation. The Building Department says single family residence and a 1950 residence with garage. I don't know how much weight I can give this.

Mrs. Sugarman Esq.: We're asking you to look at everything taken together.

Mr. Smith: There's no doubt that you fixed the place up. It's nice.

Mr. Bowie: Thank you.

Mr. Mattatall: Mr. Owen, is there a standard we have to set (not clear).

Mr. Owen Esq.: It's just a preponderance of the evidence.

Mr. Mattatall: What I'm looking at here and it's clear to me that the records show it to be an apartment with garage. A Stop Work Order was given which caused the place not be lived in over a year.

Mr. Bowie: No, because of the Stop Order.

Mr. Mattatall: For some reason, the Building Department observed that no one was in there and there upon made that decision.

Mr. Smith: Have the utilities been in that building?

Mrs. Sugarman Esq.: Yes. That's why we have the letter from the prior owner.

Mr. Smith: Have there been any other building violations issued?

Mr. Bowie: No.

Mrs. Sugarman Esq.: Just the violation of the Building Permit for the work done because Mr. Steenrod issued them. That matter has been adjourned before Judge Freehill pending the outcome of this proceeding.

Mrs. Raffo: What you're saying for is for the pre-determined use because the reason no one is in the apartment is that you were given a Stop Order.

Mr. Bowie: Correct.

Mrs. Sugarman Esq: And, Mr. Steenrod prevented them renting by that Stop Work Order and that letter that says he can't use it any more.

Mrs. Thompson: April 2003?

Mrs. Sugarman Esq.: Right. Then they put in a new furnace and a new electric box.

Mrs. Thompson: This is in the garage?

Mrs. Sugarman Esq.: Right. The house is fully finished, everything is done and it is occupied. First they did the siding.

Mr. Smith: Was a Certificate of Occupancy issued for the house?

Mr. Bowie: Yes.

Mrs. Sugarman Esq.: Yes.

Mrs. Thompson: Why?

Mrs. Sugarman Esq.: The house is not the issue. It's the back building that's the issue. He issued the violation on the siding and then the Town Board passed legislation that he didn't need a permit for the siding but then he had been putting in the new violation, or the violation that's pending before Judge Freehill is for putting in the furnace and a new electric box without a permit. They have the permit but it's still pending until your determination. I've been told by Mr. Steenrod that you grant the continuing use that matter would disappear and the permit will be issued for the continuation of the work and what ever requirements that he would have if they need fire protection between the garage.

Mr. Smith: Is this house and apartment hooked into Town sewer and water?

Mr. Bowie: Yes.

Mr. Smith: It is.

Mr. Bowie: Yes.

Mr. Smith: Both buildings?

Mr. Bowie: Yes. That's always been there. I putting the siding and windows and we got permits for all of that.

Mrs. Thompson: We can't be sure Mr. Steenrod said that.

Mrs. Sugarman Esq.: I know. I can't get Mr. Steenrod here but I am an officer of the Court and I am listening to your conversation. I can tell you that the matter has been adjourned and Mr. Owen represents the Town. They would have to deal with Mr. Steenrod and the permits in anything to do what ever he wanted them to do to get the apartment ready to be occupied. We're here today to ask you to continue the pre-existing use.

Mr. Bowie: As a matter of fact, they gave us a refund for the fee that we paid for the permit.

Mrs. Sugarman Esq.: That was for the siding.

Mr. Schoenberg: It seems to me that Mr. Bowie here proceeded on good faith based on representation. The paperwork shows it to be a garage with an apartment. We also have the letter from Mr. Torres that he rented during that period.

Mrs. Sugarman Esq.: I believe he works in construction and lived here on the weekends.

Mr. Schoenberg: Based on the information, I don't see a reason why it can't be continued as a garage with an apartment.

Mrs. Raffo: The pre-determined use was not active because of the Stop Work Order.

Mr. Bowie: Exactly.

Mrs. Raffo: I understand that the vacancy was due to the Stop Work Order. We have documentation that it was occupied up to the time of the Stop Work Order.

Mrs. Thompson: Could not understand.

Mr. Owen, Esq.: The issuance is that it's been a continuous use and not just since the year 2000. This issue has come up before.

Mr. Smith: I Move to close the Public Hearing at 9:12 P.M. I Move to grant the applicant the following determination a pre-existing or continued use of the apartment and the, I will call it the secondary structure above the garage on the property whether it's a permitted continued use. Any approval we're going to put in that it's subject to removing the shed and doing some planting along the back to shield the condominiums. When I say planting, I'm talking either evergreens or flowering trees of some sort. Five or six trees back there. My determine is it's already there. In this case you can proceed. There was some question as to what the building permit was for. The variance asked for is appropriate for the neighborhood. It's certainly not adverse. It's not an undesirable change to the neighborhood or the character of the nearby premises. I don't see how you can achieve the variance any other way. Whether it's self-created or not, I don't believe it was. You submitted at least some evidence that the building was occupied for a few years. Seconded.

Mr. Bowie: Okay.

VOTE:

In favor (Aye)	5
Opposed (Nay)	1

DECISION:

The interpretation of an pre-existing use is granted; please see the Building Department.