

TOWN OF WALLKILL
ZONING BOARD OF APPEALS

August 10, 2009

PRESENT:

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

J. Owen, Esq.

EXCUSED:

Ms Sullivan (Excused)

MEETING OPENING:

Ms Wilson: I Move to accept the Minutes of the August 10, 2009 Meeting, Seconded (Petelinz); All in favor; Motion carried.

The following Continuance, Public Hearings and Application Review (September 14, 2009) were conducted, voted upon as noted and scheduled.

CORRESPONDENCE:

Six Month Extensions:

Michael G. Palmucci (2/11/08)

Mr. Wilson: He was granted variances on February 11, 2008. He is requesting a six month extension due to troubling economy and banking industry problems. The bank he used for financing has gone out of business or as they called it 'merger restructuring'. New construction funding is very difficult with the sub-prime bank melt down. He is requesting a six month extension from 8/09 to 2/2010.

Mr. Wilson: I move to grant a third six month extension on variances granted February 11, 2008: Request for a variance of 249-22-D(1): 1) Side yard from 20ft to 10ft; 2) Front yard from 35ft to 12 ft; 3) One side yard from 20ft to 12.5 ft; 4) Area from 18,750 sq/ft to 6,890 sq/ft; 5) Lot width from 100ft to 50ft; 6) Two side yards from 40ft to 23ft. Property located at the corners of Brookline Avenue and Victory Street (75-9-1); Designated R-1; Subject to no further variances to be requested; Seconded.

DISCUSSION:

Ms Petelinz: This was originally granted in February 2008 and is a third extension.

VOTE:

In favor (aye) 5 Johnson, Petelinz, Najac, Dunn, Wilson
Opposed (nay) 0

DECISION:

Mr. Wilson: Extension granted subject to conditions noted.

CONTINUANCE:

Martin E. Kuhl Request for a use variance (249-22):
1. to permit multiple dwelling with four apartments
Property located at 512 / 514 Highland Avenue Ext.
(36-2-40.1)
Designated ENT

Mr. Martin Kuhl (applicant):

Mr. Wilson: This is a continuation from the July 13, 2009 Public Hearing. We were looking for legality of the current residences you have.

Mr. Kuhl: Here are taxes I have paid over last 2 years showing the 2 residences. This is your Town paperwork showing it is residential and not commercial. In the zone you call commercial or you have. This dates back to 1950 when Fred Kuhl who is deceased now, built the building and all the permits on the building are on the record that shows the TOW approved everything we have done there. (presented to the Board)

Mr. Wilson: This shows 1966, some 1950.

Mr. Kuhl: I keep and try to keep a nice place. I offered it for a Deli at \$750 and have been dropping and dropping (price) and had an apartment go out a month ago for \$82 (advertising) for short rental in the THR and had people call right a way – rented it within 7 hours.

Mr. Wilson: You rented it for \$82?

Mr. Kuhl: No, the taxes are out of \$9,000. I have people waiting to go in there. It was suppose to be industrial next to me and 2 are vacant and one more are moving shortly. Six months ago they had dancing school in there so it had to be approved. It is no more what we use to think of industrial use to be. 74 homes behind me going up and quite close if you look around – someone was there spoke to my son (Mr. Wilson) so you saw what the place looks like. There is a yard.

Mr. Wilson: A Jacuzzi and yard. (he presented the information from 1950 to the Board).

Your uncle built this? Did he have a permit when he build it?

Mr. Kuhl: He was the clerk here for a while. I am sure he had everything up to snuff there.

Mr. Wilson: Are there any questions from the Public? (No)

Mr. Wilson: Any questions or comments from the Board?

Mr. Wilson: You can take the tax bills back. Do you have copy of the additional information?

Mr. Kuhl: Yes I do. The one apartment in front is ready to go other than a couple of items.

Mr. Wilson: I drove by it again to take another look, it is so much commercial. My problem is commercial around you to put in a fully commercial area pains me.

Mr. Kuhl: I have to maintain the building with some sort of revenue.

Ms Petelinz: Is Kuhl's Highland House part of this?

Mr. Kuhl: No, Miles and I own the house.

Ms Petelinz: I have been past the building many times, it is all commercial there, all commercial and may have been residential at one point but the zoning has changed, all commercial along that strip.

Mr. Wilson: If I allow you to make it residential what stops neighbor from closing building and doing the same and not what the town envisioned the area to be.

Mr. Kuhl: Why? All the homes in the same area that was all business. I know I have been there a long time.

Mr. Wilson: You are on the boarder of Wallkill/Middletown.

Mr. Kuhl: The house/property goes right to the railroad track.

Mr. Wilson: How long has it been empty?

Mr. Kuhl: 2 years.

Mr. Wilson: Continuously?

Mr. Kuhl: Yes. I have tried.

Mr. Wilson: Do you have documentation to support that?

Mr. Kuhl: No, I have talked to them. I went down to \$750 and can get that for an apartment.

Mr. Johnson: A use variance is most difficult and hard to approve as it comes out if done one place why can't be done someplace. It has been successful and property maintained and I grew up there too. Across the street is huge residential place and houses behind and up road a short road commercial building by water tower is residential some years ago. I can see it is changing but difficult for use as we have to look to the future.

Mr. Kuhl: 2 apartments.

Mr. Wilson: If this is approved, and someone comes in wants 6?.

Mr. Kuhl: It has been residential.

Mr. Wilson: You have commercial use there.

Ms Najac: So I am going over criteria for: 1) Use – you can't reasonable return – you have not shown evidence but told us; 2) Is alleged hardship – what we are discussing now – you are mixed use in commercial surrounded by residential so it does apply to you so you are unique; 3) Alter the neighborhood – it will not alter essential character of the neighborhood.

Mr. Kuhl: Not much to debate on that. Versus commercial – it is designed that there were 2 areas of room down there went to 2 stores and you or TOW approved it. Then we came back and had photographer go in you approved and the KBI had the building and approved their place down on Wisner Avenue – so I lost my tenant and from that point on the economy went down and almost had someone a month later and a photographer thought he would go there he would not move from his place on other side of TOW. I don't want to sit with it vacant. If you force me to I have to come up with something, I have to do something. You want \$9,000 in taxes where is it going to come from. A man has a right to make money, if I go to work – that is my work. You are saying those houses are so close – 300 feet or less, to me and those people are going to be in our area, walk all around the area and I will come back and tell you that. I am trying to deal with this in a nice way.

If you turn me down I would like to go to the next step. Hoping tonight you would agree 2 more residences will not hurt what has all ready been approved in this area.

Mr. Wilson: They probably went in and then the zoning changed, and if Planning dealt with it. I don't have zoning map where the zoning changes around you.

Mr. Kuhl: Suresky was allowed to build in front of the home.

J. Owen, Esq.: The information is presented to the Board and no one thinks you are not doing a fine job. It is just difficult for them to plug it into what you are asking.

Mr. Kuhl: Who do I go to next in the Town? The TOW Supervisor?

Mr. Wilson: You have the right to appeal, but take one step at a time.

Ms Najac: How about keeping the front as office space?

Mr. Kuhl: It is the best apartment – carpet up-stairs.

Ms Najac: The business in front with apartment up-stairs and in back keeps the small town feel.

Mr. Dunn: You have commercial on both sides.

Mr. Wilson: I Move to close the Public Hearing at 8:07 pm; Seconded; All in favor; Motion carried.

Mr. Wilson: I Move to approve the request for a use variance for to permit a multiple dwelling with 4 apartments; Seconded.

DISCUSSION:

Mr. Johnson: In reviewing over the past meetings – 1) reasonable return – residential in the area and business might not want to be there. You can't get a return and have shown it. 2) hardship unique – it does not, apartments up-stairs and you are not turning the whole building into apartments; 3) alter neighborhood – it certainly would not – store front now apartment only problem is small children and the road; 4) hardship self-created – it is mixed use any way. And am in favor.

Ms Petelinz: His (Mr. Johnson) argument is strong and vote yes.

Ms Najac: He (Mr. Johnson) said what I'd say – yes.

Mr. Dunn: Eric went over the steps and you passed the tests and say yes.

Mr. Wilson: Your are a gentleman and the hardship is not as unique as the rest of the Board sees it and have other mixed uses that are struggling too; character – you change commercial to residential and everything else is commercial; you did not create

VOTE:

In favor (aye) 4	Johnson, Petelinz, Najac, Dunn
Opposed (nay) 1	Wilson

DECISION:

Mr. Wilson: The variance is granted. You have six months to start work within that time, please return for a continuance. You will need to go to the Planning Board which may take longer than six months. You need to see the Building Permit Department for a permit.

PUBLIC HEARINGS: (September 14, 2009)

John Cortez

Request for a variance of 249-20(D) (side yard):
1. side yard from 20ft to 10ft
Property located at 29 Miller Heights Road
(71-2-41)
Designated R-2

Mr. Wilson: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 8:12 pm.

Mr. Wilson: I Move to open the Public Hearing at 8:13 pm; Seconded; All in favor; Motion carried.

Mr. Cortez: We want to build a deck on the side of the house and it is 12 x 18 or 12 x 20 and it will reduce the side yard from 20 feet.

Mr. Wilson: This is not unusual.

Mr. Wilson: Any questions from the Public? (No)

Mr. Wilson: Any questions from the Board?

Ms Petelinz: Will this be an enclosed deck?

Mr. Cortez: No.

Mr. Wilson: It is similar to others built as close at 10 feet within each other.

Mr. Wilson: I Move to close the Public Hearing at 8:15 pm; Seconded; All in favor; Motion carried.

Mr. Wilson: I Move to grant the following side yard variance from 20ft to 10ft; Seconded.

DISCUSSION:

(None)

VOTE:

In favor (aye) 5 Johnson, Petelinz, Najac, Dunn, Wilson
Opposed (nay) 0

DECISION:

Mr. Wilson: The variance is granted and you have six months to start work or request an extension before that time.

Lite Brite Signs (Party City)

Request for a variance of 249-11 (sign)
1. total square footage from 104 ft to 174.5 ft
Property located at Suite #4, 470 Rte. 211 East
(50-2-63)
Designated TC

Mr. Wilson: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 8:16 pm.

Mr. Wilson: I Move to open the Public Hearing at 8:17 pm; Seconded; All in favor; Motion carried.

Brian Sardello (for Party City): We just want to make the sign a little larger than the sq/ft you get with store front length. It is a national chain and larger store in the back. It is similar to bed bath and beyond.

Mr. Wilson: You went down to 177 or 192?

Brian Sardello: If you feel 192 is too large, we can go to 174.

Mr. Wilson: How did you make it 177?

Brian Sardello: The letters are a little smaller (presented a rendering).

Mr. Wilson: Is there anyone from the Public to this matter? (No)

Mr. Wilson: Any comments or questions from the Board?

Mr. Johnson: Can you do the 174 ft?

Mr. Wilson: You are allowed 104.

Brian Sardello: Being a national chain – ‘National Party Discount’ store it would be difficult; they would not be happy with us.

Mr. Dunn: You keep tag line the size and the other line is smaller? The new one says 29.1 so you making shorter but longer.

Brian Sardello: The overall size did shrink.

Mr. Dunn: Tag line the same size?

Mr. Sardello: The letters get squished when reduced and if you pull them out they are easier to read. Same as with WORD on your computer at home.

Mr. Dunn: They will not be in the right proportion – make them thinner.

Mr. Johnson: The spaces between.

Mr. Dunn: The tag line controls the length and if that is the same height – they probably pulled the line out, too. If you are saying 28.3 and spaces out right it will increase it another foot. Think it should say the 28.3.

Mr. Wilson: I understand what you are saying. We just had one for *Mens Warehouse* – it also included the white space. I am more concerned for square footage. What we are saying is make shorter and size down?

Mr. Johnson: Less than 174.

Mr. Dunn: I don't understand why stretch it to get letters in it.

Mr. Wilson: Do you want him to come back? I understand what you are saying. The signs are there now, *Models* and others are large and understand what they want to see. In parking lot facing the back (Home Depot).

Mr. Sardello: *Kohls* is huge and they are not little pizzeria they are larger anchor stores back there.

Mr. Wilson: Do you want us to vote o 192 or 174?

Ms Petelinz: Prefer to vote on 174.

Mr. Sardello: Can I ask what the vote is?

Mr. Wilson: You need 4 and which one to vote on?

Mr. Sardello: The question is if I don't get approved for 192 do I have to...

Mr. Johnson: ...you have to come back.

Mr. Sardello: They have started construction so it is time sensitive site. I will go for ht 174.

Mr. Wilson: The variance is revised down to 174. (application was signed).

Mr. Wilson: I Move to Close the Public Hearing at 8:26 pm; Seconded; All in favor; Motion carried.

Mr. Wilson: I Move to grant the following sign variance: from 104 to 174.5 sq/ft; Seconded.

DISCUSISON:

(None)

VOTE:

In favor (aye) 5 Najac, Dunn, Petelinz, Johnson, Wilson
Opposed (nay) 0

DECISION:

Mr. Wilson: The variance is granted, please see the Building Department.

Karl Winum
rental

Request for a use variance:
1. to permit a 2nd residence on the property as

Property located at 1394 Goshen Turnpike
(24-1-15.2)
Designated R-2

Mr. Wilson: The mailings were reviewed by the Board and filed for the record. The Public Hearing Notice was read at 8:29 pm.

Mr. Wilson: I Move to open the Public Hearing at 8:30 pm; Seconded; All in favor; Motion carried.

Mr. Wilson: Please give us a description of your request.

Mr. Winum: There is an existing 40 x 100 ft barn on the property.

Mr. Dunn: You have 5 structures on it.

Mr. Winum: It is a total of 1,100 sq/ft. and only 1/3 is for this.

Mr. Wilson: What is the square footage of the building?

Mr. Winum: It is 2 story structure – and about 1100 and 1200 of it a residence upstairs / downstairs.

Dunn: What about the rest of the barn?

Mr. Winum: For storage.

Mr. Dunn: Any animals?

Mr. Winum: No.

Mr. Wilson: I saw some chickens. Do you have a reason or special need for it?

Mr. Winum: Originally had a fiancé and we split the costs and she left so I am living there alone. Actually prefer to have someone help maintain the place and live there. It is a lot by myself at this moment.

Mr. Wilson: You are looking at it now as rental?

Mr. Winum: It is a studio and only big enough for a single person may be a couple and only to off set cost of the home.

Mr. Wilson: It is very difficult thing to obtain and 4 criteria you have to present to us.

Mr. Dunn: If you sell it and the next person they can't have people and animals in the same building.

Mr. Wilson: Any comments or questions from the Public?

Gary Paganni (1380 Goshen Turnpike) I am neighbor: It is a studio apartment and times the way they are and to off set the cost I can understand. I personally don't have any problem being the neighbor.

Mr. Dunn: You have plenty of room.

Mr. Winum: It is only 5 acres. And worked on soils and conservation and need 2 years of receipts as there is less than 7 acres for a farm.

Ms Petelinz: How many bedrooms in your house?

Mr. Winum: Three.

Ms Petelinz: Would it be cheaper if you rent to one person to rent a room?

Mr. Winum: In my home – would you?

Ms Petelinz: If I needed to. People rent out rooms.

Gary Paganni: Being it is your home, if you were younger easier to have a roommate.

Mr. Johnson: When did you purchase it?

Mr. Winum: 4 or 5 years ago.

Mr. Johnson: What do you store there now?

Mr. Winum: There is a Woodshop there now, toys up stairs (4 wheelers) and stuff on other side.

Mr. Dunn: What about fire separation?

Mr. Winum: If there is anything with gas all I would need to do is put up fire proof sheet rock to separate it from the rest of the building.

Mr. Johnson: Use is hard to obtain – big thing is regular thing for use with similar circumstances in a large barn. It is against town code in certain cases it is like a riding business and put apartment in for the care taker but no money changing hands. That is only time it has been considered or for ill family member. We have had to say no in the past and look at stipulations. Hardship – self created: zoning was there before; alter the neighborhood – if you have multiple dwellings others would want it; Unique – we have seen dozen or so of these; Reasonable return- no rental before you could rent the barns which is a possibility too. I rent at \$150/month to store a car now. There is lot of reasons to look at this.

Mr. Wilson: I Move to close the Public Hearing at 8:39 pm; Seconded; All in favor; Motion carried.

Mr. Wilson: I Move to grant the following use variance for second residence for property to be used as a rental; Seconded.

DISCUSSION:

Mr. Johnson: I summed it up.

VOTE:

In favor (aye) 0
Opposed (nay) 5 Johnson, Petelinz, Dunn, Najac, Wilson

DECISION:

Mr. Wilson: Your request is denied. We can't allow a second residence.

HEARING REVIEWS: (September 14, 2009)

Rosane Alves Da Silva:

Rosane Alvez Da Silva: I do not have enough property and the pool was working the beauty of the pool is there is little small decking with the house and or in the back and needed the little deck. The construction person said the land is like that, why not put deck in and deep will be higher. I did not know any thing and the pool makes like a wall. Some years in the county, I have to do something. Everything is approved but for the deck.

Mr. Wilson: Replacing an older deck with newer larger deck. How large is the one there?

Ms Da Silva: About 24 x 20.

Mr. Wilson: You will need 2 side yard variances.

Mr. Wilson: Any questions from the Board? (No)

Mr. Wilson: I Move to hold a Public Hearing on September 14, 2009 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. Wilson: 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.

Wheldon A. Abt, Managing Partner Bronner Assoc., LLC.:

Mr. Abt: This is approximately 7.5 acre lot parcel for over 100 years and in family and remaining piece of a dairy farm and remaining put in LLC and I am manager of the LLC. It is on boarder along the Kill and it is beautiful site because of the stream, however the regular site and difficult to build on and asking for ft yard variance. It is on Covered Road. Everything you see is not buildable (color on drawing) and I had perks done in this area (drawing) included with the submission and proposing to build small house there 2 bedroom weekend house actually and the site is very steep. From the road to flood elevation is about 20 foot drop. I did the model

J. Owen, Esq.: You designed the house?

Mr. Abt: Yes. The main level is below and walk out basement and very compact area with 3 floors.

There are 2 bedrooms and have double height ceiling in the living room. My uncle had picnic area on other side of the Kill. The one thing the site does not meet is front yard because it is a corner has 145 feet so average is not too bad and meets other.

Mr. Johnson: Has the land been for sale and this is property in back?

Mr. Abt: The farm also included what was called the Scout Camp.

Mr. Dunn: Back house will be back from the stream?

Mr. Abt: Nice to be close to the stream but not in the flood plane. Hear the water and attractive area to be in.

Mr. Dunn: Elevation in the back?

Mr. Abt: 14 feet in elevation from basement to the stream – vertical.

60 to 20ft front yard set back and notice terrace inside the back unless 1 foot above grade and would like entry terrace 6 x 9 ft.

Mr. Wilson: House placed on this now?

J. Owen, Esq.: You need 6 feet for the terrace so down from that.

Mr. Abt: The section is 249-9-C.

Mr. Wilson: IT may be a new Section we don't have in this book.

J. Owen, Esq.: It is a second variance.

Mr. Johnson: The grade changes to building site. You don't want to have a problem and have to come back.

J. Owen, Esq.: A variance or interpretation.

Mr. Wilson: We'll do a variance.

Mr. Wilson: The variances: 249-9-C Terrace from 1ft to 6ft in height/grade; 249-19-1 2) front yard set back from 60 ft to 20 ft.

Mr. Wilson: I Move to hold a Public Hearing on September 14, 2009 at 7:30 pm or as soon thereafter as the matter can be heard; Seconded; All in favor; Motion carried.

Mr. Wilson: It is necessary to notify everyone within 1,000 feet of your property. You can obtain the list of names from the Town Tax Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the week. Take that notice, copy it and mail it to everyone on the list at least 15 days prior to your scheduled Public Hearing date. Mailings must be sent either by certified or registered mail. Bring your proof of mailings with you to your Public Hearing. The Public Hearing will not be opened without your proof of mailings.

MEETING CLOSE:

Mr. Wilson: There being no further items to be presented to the Board, I Move to close the Meeting at 9:03 pm; Seconded; All in favor; Motion carried.

TSB:jcd

TOWN OF WALL ZONING BOARD OF APPEAL

DECISION SHEET

AUGUST 10, 2009

Martin E. Kuhl

Request for a use variance (249-22):

1. to permit multiple dwelling with 4 apartments
Property located at 512 / 514 Highland Avenue Ext.
(36-2-40.1)
Designated ENT

Decision: Variance granted

John Cortez

Request for a variance of 249-20(D) (side yard):

1. side yard from 20ft to 10ft
Property located at 29 Miller Heights Road
(71-2-41)
Designated R-2

Decision: Variance granted

Lite Brite Signs (Party City)

Request for a variance of 249-11 (sign)

1. total square footage from 104 ft to 174.5 ft
Property located at Suite #4, 470 Rte. 211 East
(50-2-63)
Designated TC

Decision: Variance granted

Karl Winum

Request for a use variance:

1. to permit a 2nd residence on the property as rental
Property located at 1394 Goshen Turnpike
(24-1-15.2)
Designated R-2

Decision: Variance denied

SIX MONTH EXTENSION:

Michael Palmucci (2/11/08):

Request for a third six month extension on variances granted February 11, 2008:

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

1. Side yard from 20ft to 10ft
2. Front yard from 35ft to 12 ft
3. One side yard from 20ft to 12.5 ft
4. Area from 18,750 sq/ft to 6,890 sq/ft
5. Lot width from 100ft to 50ft
6. Two side yards from 40ft to 23ft

Property located at corners of Brookline Avenue and Victory Street

(75-9-1); Designated R-1

Decision: Variances granted subject to:
No further variances to be requested

DECISION: Six month extension granted

TOWN OF WALLKILL
ZONING BOARD OF APPEALS
PUBLIC HEARING NOTICE

Notice is hereby given that a Public Hearing of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York will be held at the Town Hall, 99 Tower Drive – Building A, Middletown, New York on the 14th day of September, 2009, at 7:30 pm or as soon thereafter as the matter can be heard on the application of:

Rosane Alves Da Salva, 116 Belmont Avenue, New York, 10940 for a variance of 249-22(D) (side yards) for the property of Rosane Alves Da Silva, 116 Belmont Avenue, Middletown, New York 10940. Property (76-5-14) located at 116 Belmont Avenue, Middletown, New York 10940 and designated R-1.

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

Stanley Wilson
Zoning Board of Appeals

TOWN OF WALLKILL
ZONING BOARD OF APPEALS
PUBLIC HEARING NOTICE

Notice is hereby given that a Public Hearing of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York will be held at the Town Hall, 99 Tower Drive – Building A, Middletown, New York on the 14th day of September, 2009, at 7:30 pm or as soon thereafter as the matter can be heard on the application of:

Weldon A. Abt, Managing Partner, Bronner Associates, LLC, 90 Crystal Run Road – Suite 108, Middletown, New York, 10941 for a variance of 249-19-1(setback) and 249-9-C (height) for the property of Bronner Associates, LLC, c/o Wheldon A. Abt, 90 Crystal Run Road – Suite 108, Middletown, New York 10941. Property (6-1-43) located on Hubbard Road, Middletown, New York 10940 and designated R-A.

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

Stanley Wilson
Zoning Board of Appeals