

**MINUTES**

**Town of Wappinger  
Zoning Board of Appeals  
May 28, 2019  
Time: 7:00PM**

**Town Hall  
20 Middlebush Road  
Wappinger Falls, NY**

Summarized Minutes

**Members:**

Mr. Casella	Chairman	Present
Mr. DellaCorte	Member	Present
Mr. Galotti	Member	Absent
Mr. Haas	Member	Present
Mr. Shah	Member	Absent

**Others Present:**

Mr. Horan	Town Attorney
Mrs. Roberti	Zoning Administrator
Mrs. Ogunti	Secretary

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**SUMMARY**

**Adjourned Public Hearing:**

NERP Holding Tractor Supply Company  
& Retail Store

Adjourned to June 25, 2019

**Public Hearing:**

Louis & Debra Camacho

Variance granted

**Discussion:**

Joan D. Sanford

Site visit on June 8, 2019  
Public Hearing on June 11, 2019

Claudia Levesque & Joseph Shaffer

Site visit on June 8, 2019  
Public Hearing on June 11, 2019

Nicole & Travis Clarke

Site visit on June 8, 2019  
Public Hearing on June 11, 2019

Kevin & Lynne Anstee	Site visit on June 8, 2019 Public Hearing on June 11, 2019
Donald F. Ross	Site visit on June 8, 2019 Public Hearing on June 11, 2019
E&C Espicoz Properties	Site visit on June 8, 2019 Public Hearing on June 11, 2019
Red Cedar Arborist & Landscapers, Inc.	Site visit on June 8, 2019 Public Hearing on June 11, 2019

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<b>Mr. Haas:</b>	<b>Motion to accept the Minutes from April 9, 2019.</b>
Mr. DellaCorte:	Second the Motion.
Vote:	All present voted Aye.

**Adjourned Public Hearing:**

**Appeal No. 19-7670 (Variance)**

**NERP Holding Tractor Supply Company & Retail Store:** Seeking an area variance Sections 240-96(F) and 240-97(B) of the District Regulations in an HB Zoning District.

**-Where it is required that undeveloped parking area be maintained as additional landscaped area, the applicant can provide banked parking area to be asphalt, thus requesting a variance of landscaping requirement to allow undeveloped parking area to be used as fenced outdoor display area.**

-Where **128 parking spaces** are required, the applicant can provide **77 parking spaces**, thus requesting a reduction of spaces under 240-96(F) to allow for a reduction of **51 spaces**.

The property is located on **Route 9** and is identified as **Tax Grid No. 6157-04-539374** in the Town of Wappinger.

Present:	Jim Cassidy – Engineer Alec Gladd – Attorney
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<b>Mr. DellaCorte:</b>	<b>Motion to open the Adjourned Public Hearing.</b>
Mr. Haas:	Second the Motion.
Vote:	All present voted Aye.

Mr. Casella:	We are going to do something different here and hopefully Jim Horan spoke to the both you that we are going to move your public hearing to June 25, 2019. We are looking for a Negative Declaration from the Planning Board which will not be until after the discussion on June 3,
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2019. Is there something else you gentlemen want to show us tonight?

Mr. Gladd:

Yes, Alec Gladd from Cuddy Feder. We were here last in March and at that meeting there were some questions as to parking data for stores in New York. I don't know if you guys were forwarded the email in time but I have printouts. Specifically the chairman had asked about Highland and Amenia but unfortunately those stores are in a shopping center. We weren't able to discern all kinds of parking was specifically dedicated to those stores but if they were approved under the current code standards. They would only require 77 parking spaces for a similarly size store. We also looked at the 5 other closest stores in New York and they range from 70 to 86 parking spaces also for an average of 78.8 which is just around the relief we are requesting of 77 parking spaces. So we just think this just adds to the submission we made at the last meeting for stores in Connecticut. What we are requesting is only the amount of parking spaces that are required for this site. There were some concerns about access with the ACURA site and we have executed an agreement with ACURA since we were last here before this board removing some of those concerns. I don't know if Jim wants to speak to this.

Mr. Gladd continues his overview of the project.

Mr. Cassidy:

For the record I am Jim Cassidy Professional Engineer with Hallisey, Pearson & Cassidy Engineering Associates, Inc. Again, this is the existing site photo so if you look at the ACURA dealership the exit comes out on the property where they have an easement. The original proposal we put before you "T" in to the existing driveway. We are before the Planning Board and New York DOT regarding traffic confusion of vehicles coming into our site and vehicles exiting our site. We went back and we worked with the ACURA dealership and at this point we have an agreement in place. We are going to remove that existing curb cut and turn the new access driveway to our property. They are going to have an access point to the rear of their property.

Mr. Cassidy continues his overview of the project.

- Mr. Casella: Are you going to have stop signs between the Tractor Supply Store and the ACURA dealership?
- Mr. Cassidy: Yes.
- Mr. Casella: So you want more space in the back of the ACURA to park more cars there?
- Mr. Cassidy: A lot more cuing of vehicles as you come out.
- Mrs. Roberti: Jim, because it's a public hearing could you just show that to the audience?
- Mr. Cassidy: Sorry.
- Mr. DellaCorte: So the ACURA driveway will be removed and they will "T" into your driveway?
- Mr. Casella: So the exit that goes out to Route 9 on the far right hand corner will be closed off and they will have the intersection between the ACURA and the Tractor Supply Store.
- Mr. Haas: So these are just for our information and we have to look only at the variance for the parking.
- Mr. Casella: Yes.
- Discussion continues.
- Ms. Pace: My name is Regina Pace, 53 Myers Corners Road. I just wanted to know is that going to be a 2-way driveway and the width of it.
- Mr. Cassidy: It's a 2-way driveway and it is 28 feet wide.
- Ms. Pace: So it is only 28 feet wide?
- Mr. Cassidy: Yes.
- Mr. DellaCorte: Jim, is it your driveway or the driveway for ACURA?
- Mr. Cassidy: Tractor Supply Store driveway and it is 28 feet wide. I believe your regulation is 28 feet wide. Tractor Supply likes to have a wider driveway because customers coming in with trailers.



Mr. Casella: Good evening. Please tell us what you need and why you need it.

Mr. Interrante: My name is Ciro Interrante. In discussions with the board we talked about reducing the size of the garage and moving it back and we also talked about adjourning the garage to the house. We went back to the drafting board and sketched out some options with connecting the garage to the house and that wasn't a good option. So we reduced the size of the garage pulling it further toward the highway.

Mr. Casella: Originally you had around 1,200 sf and you went down to 896 sf. and now you are down to 676 sf. over the required size. Do you guys have any questions at all?

Mr. DellaCorte: I don't.

Mr. Haas: No.

Mr. Casella: Did you have a chance to read the Minutes and you are caught up?

Mr. Haas: I did. I read all of the Minutes and actually I was at some of the meetings so I am familiar with what you are asking for.

Mr. Casella: Are there any questions from the audience?

Ms. Pace: I am Regina Pace, 53 Myers Corners Road. I want to know the addition they are putting how far it is from the road and how far back is it?

Mr. Interrante: From the garage to the house it 6 feet.

Ms. Pace: Is this going to block air flow putting a garage next to a house 6 feet apart? Also, how far is the garage going to be from the property line and where is the garage going to be situated?

Mr. Interrante: The garage is going to be 17.4 feet from the property line.

Ms. Pace: This doesn't say that.

Mr. DellaCorte: What was the question again, I didn't hear.

Ms. Pace: I wanted to know far the garage will be from the side property line?

Mr. DellaCorte: He said 17.5 feet.

Ms. Pace: That's what he said but it's an old map.

Mr. Casella: So you did move it since the original map.

Mr. Interrante: Yes. Originally, we were only 2 to 3 feet from the property line.

Ms. Pace: Is there a deck here some place?

Mr. Interrante: That's part of the house construction.

Ms. Pace: I know but it should be on the map.

Discussion continues.

Mr. DellaCorte: Barbara, you know about the deck on the side of the house?

Mrs. Roberti: It is with the original plan.

Ms. Pace: It was with the original but it's not on the map.

Mrs. Roberti: This is just about the garage.

Ms. Pace: It is supposed to be complete. I'm sorry Barbara if you don't like that.

Mrs. Roberti: I'm not saying anything.

Ms. Pace: You are making faces.

Mr. Casella: Any other questions from the audience? If not, I will entertain a motion to close the public hearing.

**Mr. DellaCorte: Motion to close the Public Hearing.**  
Mr. Haas: Second the Motion.  
Vote: All present voted Aye.

Mr. Casella: I just want to make it clear that there's only three of us here tonight and you need all three of us to say yes. You can choose to have a vote tonight or you can wait until we have a full board.

Ms. Camacho: I'll stick with the board that I have.

**Mr. DellaCorte:** Motion to grant the applicant the variance. The requested variance will not produce an undesirable change to the character of the neighborhood. There is no substantial detriment to be created to any nearby properties. The benefit cannot be achieved by any other feasible means. The variances are not substantial and they will not have any physical effect on the environmental condition of the neighborhood.

Mr. Haas: Second the Motion.

Roll Call Vote: Mr. DellaCorte YES  
Mr. Haas YES  
Mr. Casella YES

**Discussion:**

**Appeal No. 19-7675 (Variance)**

**Joan D. Sanford:** Seeking an area variance Section 240-30B of the District Regulations in an R40 Zoning District.

-Where **no more than two accessory structures shall be permitted in any 1-Family Residence District. The applicant has three (3 existing) structures and is proposing to allow for the construction of a new 10'x16' shed, thus requesting a variance to allow all four (4) structures to remain.**

The property is located at **131 Ketchamtown Road** and is identified as **Tax Grid No. 6157-03-294263** in the Town of Wappinger.

Mr. Casella: Good evening. Come up and tell us a little bit about what you want and why you need it.

Ms. Sanford: You of course have the full file and this is the Amish shed. The three structures on the property is a 1-car garage, there's a 5' x 6' shed, an 8' x 12' shed in the back behind the garage. When they did the amnesty about 13 years ago there was another shed on the property. They told at that time that I could have two so I got rid of one shed. Now I'm finding out that the garage is another structure. I do have almost 5.5 acres. I don't know if you've been to my house or not.

Mr. Casella: We are actually going to do a site visit.

Ms. Sanford: I have a lot of landscaping at my house and I have plans for the landscaping for the shed. Off my property line it's about 35 feet from my neighbors and it's quite a distance from the front about 150 feet.

Mr. Casella: Do you have a storage container on the property?

Ms. Sanford: Yes, I do.

Mr. Casella: Are you planning on having that removed?

Ms. Sanford: That's going.

Mr. Casella: Is that part of your three existing structures?

Ms. Sanford: It is?

Mr. Casella: So you removing the storage and putting the shed in the same spot?

Ms. Sanford: It's not in the same spot.

Mr. Casella: Not in the same spot but you are going to have a total of three.

Ms. Sanford: If you say so. There's three, plus the lease one. The rental is going.

Mr. Casella: You are going to replace one so you still will have four remaining? So three plus the new one?

Ms. Sanford: It will be four.

Mr. Haas: Could you remove one?

Ms. Sanford: If you saw the shed that this is going to be next to, it's a little barn and I painted it yellow the color of my house. So I want to put the two of them together and put landscaping around them.

Mr. Haas: So it's the 5' x 6' one that you are talking about?

Ms. Sanford: Yes.

Mr. Haas: How about the one behind the garage?

Mr. Sanford: My son puts stuff in there and you can't even see it from the road.

Mr. Casella: What are you going to store in the 10' x 16' shed that you need?

- Ms. Sanford: Oh by the way, today is my 40<sup>th</sup> year anniversary since I bought that house. I just realize as I'm looking at this and it says 28<sup>th</sup> of May. OMG 40 years today. My house has a flat roof so it really doesn't have an attic. My granddaughters are living with me now. What I would like to do is clean those storage rooms out and fix my files so she can have a little room in the house.
- Mr. Casella: We would like to do a site visit on the 8<sup>th</sup> of June at 9:00am and the public hearing will be on June 11, 2019. When we get there just give us an approximate area where the shed will be.
- Ms. Sanford: I do have a 10 feet block there so I can show you where I want to put the garden.
- Mr. DellaCorte: Just to be clear, you have three sheds now.
- Ms. Sanford: One is a garage.
- Mr. DellaCorte: So are they for your cars?
- Ms. Sanford: No, my son has his stuff in there.
- Mr. Haas: You could make it bigger and get rid of one.
- Ms. Sanford: I already paid for it but was waiting on the variance process.
- Mr. Haas: I'm not trying to make things difficult but part of our responsibility is try to reduce the variance as possible to work with you, so I tried.
- Mr. Casella: One of the other things too is to take a look at the 5' x 6' shed and where you are going to put a 10' x 16' shed making it three structures in total.
- Ms. Sanford: I'm not understanding what you are saying.
- Mr. Casella: You have the garage, the 8' x 10' garage and the 10' x 16' shed, that would be your three structures. Today what you have is the garage, the 5' x 6', the 8' x 10' and storage.

Ms. Sanford: It's a small one and it looks like a little barn. When I bought this house 40 years ago I had horses there.

Mr. DellaCorte: Okay, we will take a look at it.

Mr. Casella: I never realize you had 5.5+ acres. We will take a look at it.

**Appeal No. 19-7674 (Variance)**

**Claudia Levesque & Joseph Shaffer**: Seeking an area variance Section 240-37 of the District Regulations in an R40 Zoning District.

-Where **No accessory structure is permitted in the front yard, the applicant is seeking a variance to allow for an 18' above ground pool and deck to be placed in their front yard.**

The property is located at **188 Osborne Hill Road** and is identified as **Tax Grid No. 6156-01-418560** in the Town of Wappinger.

Mr. Casella: Good evening.

Mr. Shaffer: I'm Joe Shaffer and this is Claudia. I think you have the packet and I printed out some things for you.

Ms. Levesque: We have an unusual property.

Mr. Casella: Yes, you have a flag lot.

Ms. Levesque: We have a flag lot and the property nor the house are visible from Osborne Hill Road at all.

Mr. Casella: You are surrounded by woods.

Mr. Shaffer: The way the property is situated it's in the backyard. This is the only place we can put the pool.

Mr. Casella: Isn't your septic on the side of your yard?

Mr. Shaffer: Yes, it is. Everything else would be too close to the property line and we have a lot of trees there as well.

Ms. Levesque: According to this the setback will be well within the limits of all of the neighbors.

Mr. Casella: How many acres do you have?

Mr. Shaffer: I have .73 acres.

Mr. DellaCorte: Just out of curiosity and maybe my understanding of flag lot is different could you show me?

Discussion continues.

Mr. DellaCorte: It makes sense now I was expecting something different in my mind.

Mr. Casella: You also share the driveway?

Mr. Shaffer: Yes, we share the driveway with Vinny Bettina. We have an easement for that.

Mr. DellaCorte: Now I understand the flag lot.

Ms. Levesque: We spoke with the neighbors to see if they would be able to see us slightly and they had no problem with it but we said we would send something in the mail.

Mr. DellaCorte: Your front property line is actually on Osborne Hill Road side.

Ms. Levesque: Yes, but there are still houses in front. We can't see Osborne Hill Road from our house.

Mr. Shaffer: We would do whatever we need to do for the variance but that's the only place we can put it.

Mr. Casella: Do you have it marked out at all where the pool is going to go?

Ms. Levesque: Yes, we do.

Mr. Casella: We are going to do a site visit on June 8<sup>th</sup> around 9:15am or so. The public hearing will be on June 11, 2019.

Ms. Levesque: Thank you.

**Appeal No. 19-7676 (Variance)**

**Nicole & Travis Clarke:** Seeking an area variance Section 240-37 of the District Regulations in an R20 Zoning District.

-Where **35 feet** is required to the front lot line, the applicant can provide **30 feet**, thus requesting a variance of **5 feet** for the construction of an 8' x 5' front porch.

The property is located at **47 Robert Lane** and is identified as **Tax Grid No. 6158-04-920143** in the Town of Wappinger.

Mr. Casella: Good evening. Come up and tell us a little bit about what you are looking to do and why you want to do it.

Ms. Clarke: Hi I'm Nicole Clarke and I have my father, Mark Roberti here with me. We are looking to replace our front porch. I have our drawing of the house here and I'm not sure you guys have it. When we bought the property there was a stoop. Originally when we submitted the permit we were looking to do 35 feet which is longer than what is currently there. We came back and asked if we could do 30 feet which is currently what's on the house.

Mr. Casella: So you are going to replace the wood deck and put a larger wood deck on?

Ms. Clarke: It's going to be exactly the same as what's currently there. It will just be Trex instead of wood.

Mr. Casella: The same footprint?

Mr. DellaCorte: Originally you were requesting 2 feet and you reduced it by 2 feet but it was still denied.

Ms. Clarke: Yes.

Mr. DellaCorte: What was the reason?

Ms. Clarke: I brought pictures on my phone if you want to see them. Where our walkway is we were going to extend it a little bit but when it got denied we didn't realize that the previous owners have put this illegally. So we decided to replace what's already there but we got denied again and that we need a variance.

Mr. Casella: Sounds simple enough. Unless you have more questions we would like to do a site visit on June 8<sup>th</sup> around 9:30am and schedule the public hearing for June 11, 2019. Could you have it marked out?

Mr. Roberti: The deck is still there.

Mr. DellaCorte: Can I see that?

Ms. Clarke: Yes, absolutely.

Mr. DellaCorte: So you are just replacing this with a new one?

Ms. Clarke: Yes.

**Appeal No. 19-7677 (Variance)**

**Kevin & Lynne Anstee**: Seeking an area variance Section 240-37 of the District Regulations in the R20/40 Zoning District.

-Where **10 feet** to the side property line is required, the applicant can provide **4 feet**, thus requesting a variance of **6 feet** for the legalization of an existing shed.

The property is located at **7 Heather Court** and is identified as **Tax Grid No. 6256-02-605769** in the Town of Wappinger.

Mr. Casella: Good evening. Tell us a little bit about what you are looking for and why?

Mr. Anstee: Hi there, I'm Kevin Anstee and my wife, Lynne. We reside at 7 Heather Court. We are trying to move to 24 Heat Road in Fishkill because we are downsizing. We are getting ready for retirement. We bought this house three years ago and we went through the municipal search and no violations issued came up and we purchased the property. When we put the house up for sale and part of the requirement was to do a municipal search again. They found a violation that this shed was not legal. It also has electric routed to the shed and we probably need an electrical inspection. Where the shed is right now has gravel and it provides good drainage. The other thing was why can't we move it 6 feet away to the property line? Then that would put me where it conflicts with the double gate.

Mr. Casella: So you will have to rewire all the electrical? Is it an 8' x 8' shed?

Mr. Anstee: It is an 8' x 8' tool shed.

Mr. Haas: What's that across the adjacent property?

Mr. Anstee: The neighbor's driveway.

Mr. DellaCorte: So you didn't put the shed there? It was an existing shed that was put there by the previous owner.

- Mr. Anstee: Yes, it was there when I bought it.
- Mr. Casella: It was there when you purchased the property and they didn't know that they needed a variance.
- Mr. Anstee: It was from a listing when we bought it.
- Mr. Haas: Is this as a result of the Town law about walk around?
- Mrs. Roberts: That's why they didn't catch it the last time.
- Mr. Haas: There was no law that said the building inspector had to walk around you just look from the curb. Now they do a walk around.
- Mr. Anstee: They probably just looked and saw a shed and then another one but that one has a Certificate of Occupancy.
- Mr. Casella: So your buyer is expecting a shed?
- Mr. Anstee: Yes, and that causes contractual issues. It is a surprise for us. My wife has pictures on her phone.
- Mr. Casella: Ours is not colored it is black and white but you can see.
- Mr. Haas: So this is the second shed and you do not have any other detached buildings, right?
- Mr. Roberts: No, I don't. Do you want these color pictures?
- Mr. Casella: Sure, I'll take one. Are there any other questions?
- Mr. Haas: No.
- Mr. Casella: We will do a site visit on June 8<sup>th</sup> around 9:45am and the public hearing will be on June 11, 2019.
- Mr. DellaCorte: I would like to compliment whoever did the handwriting on the application.
- Mr. Roberts: I did. I used to be a draftsman. That was when we didn't use autopen and we had to do it by hand.

**Appeal No. 19-7679 (Variance)**

**Donald F. Ross**: Seeking an area variance Section 240-37 of the District Regulations in the R20 Zoning District.

-Where **20 feet** to the side yard property line is required, the applicant can provide **14.7 feet**, thus requesting a variance of **5.3 feet** for two (2) existing decks.

-Where **20 feet** to the side yard property line is required, the applicant can provide **17 feet**, thus requesting a variance of **3 feet** for a new 10' x 24' deck.

The property is located at **50 Top O Hill Road** and is identified as **Tax Grid No. 6359-03-004014** in the Town of Wappinger.

Mr. Casella:

Good evening.

Mr. Ross:

Good evening, I'm Donald Ross, 50 Top O Hill Road. I'm going to show you the scale down version. These are the two existing decks.

Mr. Casella:

Did you add them on?

Mr. Ross:

Yes, and we never got a variance for them.

Mr. Casella:

Are you the gray house across Sabra Lane?

Mr. Ross:

No, we are about four houses up.

Mr. Casella:

I live on Sabra so I know that area very well.

Ms. Ross:

We are the one with the addition. We were here for the addition.

Mr. Ross continues his overview of the project.

Mr. DellaCorte:

How long ago did you put this deck on?

Mr. Ross:

Probably about 5 years ago.

Mr. Casella:

So you didn't realize at the time you needed a variance.

Ms. Ross:

We didn't think we needed it since it was just 5 feet.

Mr. Haas:

Both of these are existing?

Ms. Ross:

This one is just add on.

Mrs. Roberti:

So the steps are coming out?

Ms. Ross:

They are gone.

Mrs. Roberti:

The first variance is to legalize this and the second variance is for the new deck. The survey shows two decks and he made the two into one.

Discussion continues.

Mr. Casella:

Do you have it marked out?

Ms. Ross:

No, we don't.

Mr. Casella:

Could you mark it or spray.

Mr. Ross:

We have a fence here and it is 2 feet on our property line.

Mr. DellaCorte:

That's your line but the fence is inside your property line.

Mr. Ross:

We put the fence in before we had this done.

Mr. Casella:

You wanted to make sure it was definitely on your property.

Mr. Ross:

Right.

Mr. Casella:

We will do a site visit on June 8<sup>th</sup> and your public hearing will be on June 11, 2019.

### **Appeal No. 19-7672 (Intepretation)**

#### **E & C Espicoz Properties:**

Seeking an Interpretation of Section 240-107(B) of the District Zoning Regulations in an R20 Zoning District. The applicant is seeking an interpretation of the Zoning Board of Appeals decision of a Use Variance dated December 27, 2017 M & C of Dutchess, Inc., Application No. 18-7637 for the ability to expand the present approved use under the Use Variance received for the site on December 27, 2017. This Use Variance was granted to utilize the existing 2,500 sf. commercial structure built in 1950 as a contractor's shop and storage in a Residential Zoning District with no anticipated change to the site.

The property is located at **20 MacFarland Road** and is identified as **Tax Grid No. 6157-04-720271** in the Town of Wappinger. (Badey & Watson)

Present:

Al Cappelli – Engineer  
Margaret McManus – Engineer  
Carlos Espinosa – Applicant

Mr. Cappelli:

The last time we were here you wanted to see a couple of elevations of the conversion of the building plus the detached garage. I thought we submitted it but anyway I have those here.

Mr. Haas:

I thought this was an interpretation?

- Mr. Cappelli: That's correct.
- Mr. Haas: So you are not asking for any Area Variances?
- Mr. Cappelli: That's correct. There was a Use Variance that was granted for the existing building. The applicant wants to expand the building and the question came up can he in fact expand the building. He's not expanding the Use Variance per say so there's a grey area. So Barbara thought we should come here and can we in fact enlarge the building?
- Mr. Casella: One of the things we want to look at when we do the site visit and I understand there's been a lot of grading done since we last looked at the property.
- Mr. Cappelli: Correct.
- Mr. DellaCorte: Bea, do we need to say that we are having a public discussion with this? Are you okay so far? Are you following along with what we are talking about?
- Mrs. Roberti: This is not a public hearing. This is just a discussion.
- Mr. DellaCorte: Did you say Jim had to be here Barbara?
- Mrs. Roberti: He was going to come back but I said you were going to set a public hearing.
- Mr. Cappelli: I got a notice about a public hearing. We are on for an Interpretation. I've never heard of a public hearing for an Interpretation. I think it's up to you guys and Jim,
- Mr. Haas: He was going to look for case law at the last meeting.
- Mr. Cappelli: That's correct.
- Mrs. Roberti: There's Jim.
- Mr. Haas: You were going to look for case law.
- Mr. Horan: As far as what the case law says, where a Use Variance is granted the underlying dimensional requirement of the district would control.

- Mr. DellaCorte: Jim, could you say that again.
- Mr. Horan: The dimensional requirement as far as lot coverage, setbacks, everything in the R20 zone that's what would apply to any new construction where there's a Use Variance.
- Mr. Haas: So you are not asking for any physical variances?
- Mr. Cappelli: That's correct. There is an addition going in on the building.
- Mr. Haas: That's the existing building.
- Mr. Cappelli: On one of the site plans that you have there's an existing garage and the applicant is looking to enlarge it.
- Mr. Haas: Taking down for a new one?
- Mr. Cappelli: That's correct.
- Mr. Haas: There's a lot of second space going on.
- Mr. Cappelli: There's a frame roof that was constructed above and beyond the flag roof of the concrete building. From what I understand that was built by one of the previous owners because he had a repair shop. He put a lift there because he needed the physical room. The photograph illustrates the pop up of the second floor.
- Mr. Haas: Are you going to come back and ask for living space?
- Mr. Cappelli: No. The applicant is looking to train his staff on the second floor and maybe there will be an office up there.
- Mr. Casella: The last time we talked the base square footage was 3,275 so 2,800 plus another 475 for the garage. Then it jumped up the 3,437 and you want to add another 1,900 square feet. Then they want to do a 30' x 60' bay for four cars?
- Mr. Cappelli: Correct, four bay garage.

- Mr. Casella: That's a pretty substantial increase from the existing building today.
- Mr. Cappelli: I am not going to argue with you in that regard however, the appearance of the building is being disguised most of the square footage. Yet it is on the second floor.
- Mr. Casella: Another thing we talked about was the increased traffic. The concern was how much of an additional traffic this is going to create noise for residents that live there.
- Mr. Haas: How big are the trucks? Is this typical?
- Mr. Espinosa: That's one of the trucks. We have three more that are 2 feet higher than that.
- Ms. McManus: They are not semi-trucks.
- Mr. Casella: How many vehicles you plan on storing on the property? What do you have today?
- Mr. Espinosa: Right now we have only one because the other four are stored in another location.
- Mr. Haas: So you have 5 today.
- Mr. Espinosa: Total in the company we have 7 vehicles. Four are stored in another location because we do not have enough space here and two are at my location right now. I have a landscaping trailer that's outside in the back of the property.
- Mr. DellaCorte: Is that the one that says K&B on it?
- Mr. Espinosa: Yes.
- Mr. DellaCorte: Which building will become the second floor?
- Mr. Cappelli: The building as you pull into the driveway to the left. The elevation will face the building in the back. The four car garage will be 30' x 60'.
- Discussion continues.

- Mr. Casella: Today, do you store any of your vehicles outside?
- Mr. Espinosa: No.
- Mr. Casella: Everything in the future will be within the building?
- Mr. Espinosa: Everything will be store inside. The only things that will be outside is the landscaping trailer.
- Mr. Haas: We approved the Use Variance for commercial use. Is there anything in the Use Variance law that would preclude expanding the buildings for commercial use if it meets all of the physical variances?
- Mr. Horan: What the law basically says in granting a Use Variance it's subject to the underlying restrictions in the zone. In the R20 zone it's pretty restrictive and the building coverage is more than 20 percent of the lot. You have to meet all the setbacks, the building height and building coverage. In essence it has to look like everything else in the district.
- Mr. Haas: I'm not going to do the math. Does it meet all of that?
- Ms. McManus: There is a restriction for only 600 square feet of accessory building. So they will need a variance.
- Mr. DellaCorte: Which building is that?
- Ms. McManus: The new garage is larger than 600 square feet.
- Mr. DellaCorte: How many square feet?
- Ms. McManus: It is 1,800 square feet because it is a four bay?
- Mr. Haas: How big is the property?
- Ms. McManus: It is over 2 acres. It is 105 square feet on 2.39 acres.
- Mr. DellaCorte: Jim, can you explain to me in layman's term what the Interpretation of the decision of the Use Variance means?
- Mr. Horan: The questions is did the prior decision contemplate making any changes in use to the building.

- Mr. Casella: So basically whatever you approved before we have to make an interpretation would we allow something like that to be enlarged. Is that what you are saying?
- Mrs. Roberti: Does it contemplate it when you approved it.
- Mr. Haas: Well, this is the same board that approved it.
- Mr. Horan: Right.
- Mr. Haas: So what were we thinking when we approved it.
- Mr. Horan: Back then there was no use.
- Ms. McManus: It was a speculative request.
- Mr. Haas: I was thinking it's a white elephant in Town and anything we can find to put it to use would be valid.
- Mr. Horan: That's ultimately the reason why you grant a Use Variance. You have to show that you cannot make productive use of it as it currently exists.
- Mr. Haas: He did.
- Mr. Casella: So they have to show a profit and loss statement?
- Mr. Horan: They did all of that. So that was the whole reason for the use variance. When you allow the use and unless you set specific restrictions in there that it can't be modified in any way. One of the reasons why a Use Variance is preferred is so that the owner of the property can legally use the property and invest money into it. It doesn't really make much sense to grant someone a Use Variance to go into an old dilapidated building and keep it that way.
- Mr. Haas: We did put restrictions on that use permit for outside storage and retail use.
- Mr. Horan: Correct.
- Mr. Haas: I don't think there was anything else.
- Ms. McManus: There was a set number of parking spaces.

- Mr. Horan: I think contemplated upgrades to the building consistent with the zoning.
- Mr. Haas: Except we allowed commercial use under the use. If this was in a commercial district, what would be the maximum allowable accessory building?
- Mrs. Roberti: It depends on the zone.
- Mr. Horan: I don't think there's a limit on accessory buildings in a commercial zone. The applicant will clearly be allowed to knock down the existing garage and rebuild the same it place.
- Mr. Casella: So same footprint.
- Mrs. Roberti: If you want a bigger garage, you will need to go by R20 standards. He would need a variance.
- Mr. Casella: So if we say the Use Variance is fine he still has to come back and get a variance.
- Mrs. Roberti: Yes, for the garage.
- Ms. McManus: So if I get the paperwork tomorrow we can then schedule a public hearing?
- Mr. Espinosa: My family and I have been suffering through this. We purchased this property not knowing this deal would happen. We purchased the property and went to Mr. O'Donnell and he never asked the question if I was going to build something else. He said don't say anything right now let's go there, you get an approval you buy the property. I don't remember what meeting it was when I asked if I could build something and you said yes, I can build something. I'm paying the mortgage and my intention was to build the garage and move everything in one place and to pay the mortgage that I'm paying on this property. Now I'm paying the mortgage and paying somebody else \$4,000.00 a month to keep my trucks. If I knew this was going to happen, I would not have purchased the property.
- Mr. Espinosa continues.

Mr. Casella: I'm sympathetic but it is buyer beware. You bought the property and they sold you a bill of goods. I'm sorry we want to help you and work with you. It's a process and we have to go through the correct paperwork and do everything by the books. We are not trying to penalize you. You did buy the property whether the terms were right or wrong. I'm sorry you are paying \$4,000.00 a month but that's not going to affect my decision.

Mr. Haas: The first thing is for an Interpretation.

Mrs. Roberti: Right, you can vote to deny or grant it tonight. That's an Interpretation and it is difference from a variance. I spoke to Jim so if they want to come for a variance on the garage, we could set the public hearing tonight for June 11, 2019.

Mr. Casella: If we vote on this tonight you need three votes.

Ms. McManus: Do you have more than three people on the board?

Mr. Casella: We have 5 people but two could not make it tonight. What I'm saying is that three of us could say yes but I'm just putting the option on the table.

Ms. McManus: Right. Could we put it this way that I get the paperwork for the variance and you make the decision for the Interpretation and the variance on the same night?

Mr. Casella: I would want to have them separate. What do you think, Jim?

Mr. DellaCorte: So Jim, I hate to keep backing up to this. All that you need from us on this Interpretation is did we think when we granted the Use Variance, did we contemplate further expansion? That's all you are asking of us for an Interpretation, is that correct?

Mr. Horan: Basically, yes.

Ms. McManus: What they were thinking then or what they are thinking now?

Mr. Horan: What they were thinking at the time they granted.

- Ms. McManus: Is it just an Interpretation that if you have a Use Variance, are you allowed to have an expansion or is it specific to this site?
- Mr. Casella: I don't think we ever contemplated doing an expansion on the building.
- Mr. Haas: It doesn't matter because the Use Variance is exactly that. It's not a variance on the physical....
- Mr. Casella: But you are not changing it.
- Mr. Haas: It's a commercial business.
- Mr. Casella: You are not changing the use, you are changing the size.
- Mr. DellaCorte: We shouldn't be discussing this part of it right now. All we are trying to determine is did we contemplate changes to this property when we granted the use variance.
- Ms. McManus: I think you are down scoping it.
- Mr. DellaCorte: Yes, I'm trying to make it simple.
- Ms. McManus: What I'm trying to say is unless you specifically thought that you were never going to expand it. That's not the same and it's like a double negative. You understand what I'm saying?
- Mr. Horan: What the law more or less says is that alterations to the use is permitted unless the original Use Variance specifically prohibits it.
- Ms. McManus: Right, it didn't prohibit it. I've read all of the notes and I know all of the notes and I did not see anywhere that you could not change.
- Mr. Casella: It's almost like you are telling me that it's a negative confirmation. We didn't say no or yes.
- Mr. Horan: As far as the determination on the Interpretation we should postpone to another meeting. I think it would be appropriate if we get the information in that you can add a variance.

- Mr. DellaCorte: The area variance for the garage?
- Mr. Horan: Yes, is there anything else that is required?
- Mrs. Roberti: He said he meets the 20 feet height.
- Mr. Horan: Isn't there a building in the setback?
- Ms. McManus: There is an existing nonconforming.
- Mr. Horan: What's typical when you add a second floor to a building?
- Mrs. Roberti: Then you would need a variance.
- Ms. McManus: Yes, to meet the setback.
- Mrs. Roberti: So you will need two variances.
- Ms. McManus: There's an existing nonconformance for the front yard setback.
- Mr. Casella: So if you got the interpretation today and we are fine with what they are doing and they came back for the variances, you could potentially say no to both of those?
- Mr. Horan: Correct, it is a totally separate issue.
- Mr. DellaCorte: I understand now.
- Mr. Horan: On its face I don't think it specifically prohibit any future....
- Mr. Casella: Even if we gave them what they want tonight there is no guarantee down the road that they can actually do what they want to do. The fact that you approved the interpretation of the use variance.
- Mr. Horan: The interpretation in essence is that changes to the site is not prohibited. That's the extent of the interpretation.
- Ms. McManus: Because of what changes we want to make, we would need to apply for two variances.

Mr. Horan: Correct.

Mr. Cappelli: If you don't want us to have the second floor on that beautiful building, we will keep the flag roof.

Mr. Casella: I just want to understand.

Ms. McManus: You want to know what your options are.

Mr. Casella: Absolutely.

Ms. McManus: By granting the interpretation that we are allowed to make changes is not granting the variance.

Mr. Casella: Okay, I'm ready to vote tonight but it's up to you guys.

Ms. McManus: It is my roll of the dice.

Mrs. Roberti: Be careful because if they deny it, you cannot go for the variance.

Ms. McManus: Right, I have to confer with my client.

Mr. DellaCorte: I'm ready to vote.

Mr. Cappelli: I'm putting a roof on there so I'm not sure if that would be considered a second floor.

Ms. McManus: We would like to have the interpretation.

Mr. Casella: Tonight?

Mr. Horan: Yes.

Mr. Casella: I will now entertain a motion to either deny or grant this interpretation.

**Mr. Haas:** **Motion that the prior Use Variance granted for the site does not prohibit future changes to the buildings on the site or expansions of the site that complies with zoning of the underlying issue.**

Mr. DellaCorte: Second the Motion.

Roll Call Vote: Mr. DellaCorte YES  
Mr. Haas YES  
Mr. Casella YES

Ms. McManus: I will get the paperwork in tomorrow.

Mrs. Roberti: Well, it's up to the board. Will you entertain them having the public hearing on June 11<sup>th</sup> or you want them to come in and show you the variance and have the public hearing on June 25<sup>th</sup>? The variance will be for the size of the garage and for a front yard setback.

Mr. Casella: So we will have the public hearing on June 11<sup>th</sup>?

Mrs. Roberti: Yes or no. She will get the paperwork in tomorrow.

Mr. DellaCorte: Barbara, I missed something in that translation.

Mrs. Roberti: June 11<sup>th</sup> is the next meeting so you can set the public hearing even though you don't have the application in hand, you've already discussed the project.

Ms. McManus: The two variances we will be seeking would be one for the 1,000 extra square feet from the accessory building and the front yard setback which is an existing nonconforming. We are also going to add a second story to the building.

Mrs. Roberti: If they did nothing to the front building, he's good to go. The minute you alter that second floor is now changing the setback. The variance is because they are changing the building otherwise it predates zoning.

Mr. Haas: What does the front setback has to be in a residential zone?

Mrs. Roberti: In an R20 zone, it is 35 feet from the road.

- Mr. Horan: The problem here is it is a flag lot and it is far away from the road but it is still in a front yard.
- Mr. DellaCorte: Back to my question. We are going to have a discussion on June 11<sup>th</sup>.
- Mrs. Roberti: No, you are having the discussion now.
- Mr. DellaCorte: So we are not going to see any plans or drawings?
- Mr. Cappelli: You have the plans already.
- Mr. DellaCorte: So this is it?
- Mrs. Roberti: No, she is going to make the application and it will be mailed and you will have it next week. It is just being done backwards since you already discussed, Bea will give you the paperwork and then you will have the public hearing on June 11<sup>th</sup>. You can still do the site visit.
- Mr. Casella: We will then vote on the variance at the next meeting.
- Mr. DellaCorte: How did June 25<sup>th</sup> come about?
- Mrs. Roberti: If you didn't set a public hearing for June 11<sup>th</sup> they would have to come back on June 11<sup>th</sup> just to tell you what they just told you.
- Mr. Casella: We are trying to save them the steps.
- Mr. Cappelli: The site plan already reflects the building is squared off and enlarged garage so you already have that. You also have my preliminary sketches of the building but if you need something else other than the application, we will get it for you.
- Mr. DellaCorte: Do we have to go and look at it?
- Mr. Cappelli: Yes, we can all go out there.
- Mr. Haas: Should we look after?
- Mr. Casella: No, you want to look before.

Ms. McManus: Do you want the four corners of the new structure staked?

Mr. Casella: Yes. We have 8 site visits schedule so it will be between 10:00am and 11:00am.

Mr. Cappelli: I'll be there at 10:30am so whenever you get there you get there.

**Appeal No. 19-7678 (Variance)**

**Red Cedar Arborist & Landscapers, Inc.**: Seeking an area variance Section 240-37 and 240-30B of the District Regulations in the HB Zoning District.

-Where **75 feet** to a State or County Road is required, the applicant can provide **42 feet**, thus requesting a variance of **33 feet** for an existing barn and new arbor.

-Where **no accessory building height in excess of 20 feet, the applicant can provide 25 feet height (existing), thus requesting a variance of 5 feet to legalize existing height on non-conforming barn.**

-Where **20 feet** to the side yard property line is required, the applicant can provide **8 feet**, thus requesting a variance of **12 feet** to allow building on right side of the property.

The property is located at **185 New Hackensack Road** and is identified as **Tax Grid No. 6158-02-999951** in the Town of Wappinger.

Present: Joseph Berger – Engineer  
Steve Relyea – Applicant

Mr. Casella: Tell us a little bit about what you are looking to do and why. I understand from Barbara that you are going to make some improvements.

Mr. Berger: It is going to be a contractor's yard for Red Cedar which is a landscaping operation. They are going to house their equipment and employee and stock in the back. The employees will show up in the morning, pick up the equipment and plants that they need and leave. His office will be there in the main building. That's about it, landscaping contractor's yard.

Mr. Casella: What kind of improvements you are going to do? From what I was told the barn is in rough shape. Are you looking to improve that?

Mr. Berger: We are actually going to improve the looks and one of the variances is to add an entranceway to the main barn so it has a nicer façade.

Mr. Casella: Is it next to the doctors' office?

Mr. Berger: Yes.

- Mr. DellaCorte: All of these variances that you are requesting are all on that barn building?
- Mr. Berger: Yes. They are basically cleaning up and there are also variances needed for the entranceway.
- Mrs. Roberti: One of the variances is for the side yard for the other building. That building was put in a couple of decade ago. They did not get a variance for whatever reason.
- Mr. DellaCorte: Is that Variance No. 3, Barbara?
- Mrs. Roberti: Yes, it's the third one and it's only 8 feet from the property line. So since we are here we are just doing some housekeeping so that everything is legalized.
- Mr. Berger: That's why we are here. We are going for a site plan, re-zone and variance. The barn height is already there and it is what it is.
- Mr. Haas: This building is a drive through right now. Is it going to remain a drive through?
- Mr. Relyea: No.
- Mr. Berger: We are going to close it.
- Mr. Haas: There will be no big garage here?
- Mr. Relyea: No.
- Discussion continues.
- Mr. Berger: You will still see the entrance but you won't be driving the equipment in there. They will be coming in from the back side.
- Mr. Haas: As long as you are talking about making it pretty, what's on the front of this building?
- Mr. Berger: It's a wood board.
- Mr. DellaCorte: This secondary building with the 12 feet variance, when did you purchase it?
- Mr. Relyea: I purchased it a year and a half ago.
- Mrs. Roberti: It's been there for decades. We can't find the variance for it so we are just trying to clean it up while we are here. As you know when we are coming for variance and we see other things, we bring it up to code.

Mr. Haas: I read somewhere in this pile there is a Negative Declaration from the Planning Board and they are all set to go for a public hearing.

Mrs. Roberti: Yes, you are all set for a public hearing.

Mr. Casella: We are going to do a site visit on June 8<sup>th</sup> around 10:30am and the public hearing on June 11, 2019.

**Mr. Haas:** **Motion to adjourn.**  
**Mr. DellaCorte:** Second the Motion.  
**Vote:** All present voted Aye.

Respectfully Submitted,

Adjourned: 8:35pm

Bea Ogunti  
Secretary  
Zoning Board of Appeals