

**ZONING BOARD OF APPEALS
TOWN OF LEWISBORO
MINUTES**

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, February 27th 2013 at 7:30 p.m., at the Town of Lewisboro Offices at Orchard Square, Cross River, New York 10518

Board Members: Present: Geoffrey Egginton, Chairman
Robin Price, Jr.
Jason Krellenstein
Absent: Carolyn Mandelker
Thomas Casper

Also Present: Alex Posadas, ZBA Secretary

The Meeting was called to order at 7:45 p.m. Chairman Egginton announced that the next ZBA meeting will be Wednesday, March 20th with a site walk scheduled for Saturday, March 16th. Chairman Egginton moved to approve the minutes of the December 19th meeting. The motion was seconded by Mr. Price; In favor: Mr. Krellenstein, Mr. Price and Chairman Egginton; Absent: Ms. Mandelker and Mr. Casper; Abstained: None; Chairman Egginton moved to approve the minutes of the January 30th meeting. The motion was seconded by Mr. Price; In favor: Mr. Price and Chairman Egginton; Absent Ms. Mandelker and Mr. Casper; Abstained: Mr. Krellenstein;

I. PUBLIC HEARINGS NEW
Cal. No. 07-13-BZ

Application of Vincent Lozupone, 1 Boulder Lane, Golden’s Bridge, New York 10526 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the “As Built” deck that is closer to the rear lot line (existing 0’ where 20’ is required) and closer to the side lot line (existing 0’-1’ where 8’ is required) in a R-MF, Residential Multi-Family District, EDII Town House setbacks.

The property is located on the west side of Boulder Lane, designated on the Tax Map as Sheet 7I, Block 11139, Lot 58, in an R-MF, Residential Multi-Family District, ED II Town House setbacks.

There was no objection to the public hearing notice.

Mr. Laurence J. Bellom, Esq. was present and accompanied by the applicant. Mr. Bellom stated that the application is to legalize an existing deck. He discussed an “as built” deck application under Cal. No. 19-11BZ for John and Emily Sinnott which was a variance request of ± 4’ where 8’ was required. Mr. Bellom described the steep slope adjacent to the Sinnott deck and compared it to the downward slope adjacent to his client’s deck.

Mr. Krellenstein asked if his client built the deck.

Mr. Bellom responded that the deck was there when his client took title in 2003 and the deck had been there for some time before that.

Mr. Price asked if a building permit was obtained for the deck.

Mr. Bellom stated that he did not represent the applicant for the purchase of the property. He stated that the applicant must clearly convey a marketable title when he gets an accepted offer. Mr. Bellom stated that they have not had a municipal search done and a potential sale fell through. He stated that if the application is denied, it would be a severe economic hardship because the deck has value and will pass muster with the Building Inspector.

Chairman Egginton asked who prepared the sketch of the deck.

Mr. Bellom responded the applicant's brother is an architect and they had a professional surveyor out to the property. He stated that all houses in the development have the decks and the ZBA has made the determination on the Sinnott application in 2011 that that deck was there when they purchased the property along with the fencing. Mr. Bellom stated that the properties are irregularly shaped lots and the deck is not obtrusive. He stated that the benefit sought by the applicant could not be achieved by another feasible method other than a variance. Mr. Bellom stated it is an existing deck and one of the similarities is that the Sinnott deck was constructed square with the house on an irregularly shaped lot. Mr. Bellom stated that the deck will not have an impact on the environmental conditions of the neighborhood. He stated that the alleged difficulty was not self created; the deck was there when the applicant acquired possession of the property. Mr. Bellom stated that it is a substantial variance for the ZBA to consider.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. There were no comments from the public. Chairman Egginton stated that the public hearing will remain open and a site walk will be conducted on the morning of Saturday, March 16th.

THE PUBLIC HEARING IS HELD OPEN.

Cal. No. 08-13-BZ

Application of Smith Ridge Housing LLC, 900 Oakridge Commons, South Salem, New York 10590 for a request for an extension of time for the application previously approved under Cal. No. 46-05BZ and 28-06BZ.

The property is located at Oakridge Condominiums on Smith Ridge Road, designated on the Tax Map as Sheets 49L & 49M, Block 09830, Lots 279 & 325, in an R-MF, Multi Family Residential District.

There was no objection to the public hearing notice.

Mr. Phil Pine was present at the February 27th meeting. He stated that he is done with the Planning Board and the mylars have been signed by everyone except for the Planning Board Chairman and Planning Board secretary.

Mr. Krellenstein stated that it is the policy of the Zoning Board that if the applicant has been working diligently on the application and this applicant has made the requisite showing. He stated that it is a complex project which will take some time to fulfill. Mr. Krellenstein stated that the letters from Smith Ridge Housing LLC, dated December 12th and 27th 2012 demonstrate that the applicant has worked in good faith. He stated that he would look favorably on a one year extension.

Mr. Pine stated that they need a one year variance through the building permit process.

Chairman Egginton asked when the applicant will appear before the Planning Board.

Mr. Pine responded that they are finished with the Planning Board. He stated that they have to sign the mylars, pay the engineering fees and the wetlands fee.

Chairman Egginton moved that the application for an extension of time be granted for a period of 12 months to expire on February 27th 2014.

The motion was seconded by Mr. Price; In favor: Mr. Price, Mr. Krellenstein and Chairman Egginton; To deny: None; Absent: Mr. Casper and Ms. Mandelker; Abstained: None;
CASE CLOSED.

Cal. No. 09-13-BZ

Application of Golden's Bridge Community Association, PO Box 701, Golden's Bridge, New York 10526 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the installation of a generator for the public water supply which will be closer to the front lot line (proposed 15' where 40' is required) and that will be closer to the rear lot line (proposed 5' where 40' is required) in a R-1A, One Acre Residential District.

The property is located on the east side of Branch Street, designated on the Tax Map as Sheet 7E, Block 12662, Lot 7, in an R-1A, One Acre Residential District.

There was no objection to the public hearing notice.

Mr. Ron Arnstein was present at the February 27th meeting. He stated that the standby generator is mandated by the Department of Health for the public water supply. Mr. Arnstein stated that the pump house is located on a long, narrow strip of land approximately 500' by 45' on Branch Street. He stated that they can not meet the setbacks due to the size of the property.

Mr. Krellenstein asked for the proposed distance from the property line.

Mr. Arnstein responded that the generator is proposed 15' from the front and 5' to the rear lot line. He stated that there is a wetland behind the property.

Chairman Egginton asked how far the neighbors are.

Mr. Price asked for a cut sheet on the generator and asked for any information regarding the sound level.

Chairman Egginton read a letter dated 2/26/13 from neighbors with a direct impact from the installation of the generator.

Mr. Michael Hayes, 8 Branch Street was present and commented that he was concerned about noise.

Mr. Price requested that the proposed location be staked out for the site walk.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. Chairman Egginton stated that the public hearing will remain open and a site walk will be conducted on the morning of Saturday, March 16th. He requested that the area be staked.

THE PUBLIC HEARING IS HELD OPEN.

II. DECISIONS- (Tentative)

CAL. NO. 01-13-SP

Application of Emily and John Sinnott, 4 The Hook, Waccabuc, New York 10597 for a Special Permit pursuant to Article V, § 220-40 of the Zoning Ordinance in the matter of a proposed accessory apartment in an existing accessory structure. The accessory structure was previously granted a variance for over 600 square feet under Cal. No. 27-01-BZ.

The property is located on the west side of The Hook, designated on the Tax Map as Sheet 25A, Block 10813, Lot 09, in an R-2, Two Acre Residential District.

Mrs. Sinnott and Mr. Riina were present at the February 27th meeting.

Chairman Egginton stated that a site walk was conducted on the morning of February 23rd.

Mr. Price stated that they conducted the site walk and very little will change except for the size of the dormer in the back. He stated that the applicant has submitted a revised plan showing the lengthening of the dormer resulting in an increase in non-conformity. Mr. Price stated that the minor changes inside are not an issue.

Mr. Krellenstein stated that it seems fine and consistent with the character of the neighborhood. He asked if the applicant will rent out the unit.

Mrs. Sinnott responded no, it is not their intention.

Mr. Krellenstein stated that the application is fine.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. There were no comments from the public. Chairman Egginton stated that the application meets all of the criteria of the Zoning Ordinance for a Special Permit. He stated an application for a Special Permit unlike a variance, is a legislative finding by the Town Board not the Zoning Board of Appeals that if it meets the criteria of the ordinance then the permit must issue. Chairman Egginton stated for all those reasons he moved that the application for a Special Permit be approved as presented for a period of 10 years.

The motion was seconded by Mr. Krellenstein; In favor: Mr. Price, Mr. Krellenstein and Chairman Egginton; To deny: None; Absent: Mr. Casper and Ms. Mandelker; Abstained: None;
CASE CLOSED.

CAL. NO. 02-13-BZ/SP

Application of Michael F. Sirignano, Esq., 892 Route 35, Cross River, NY 10518 [Owner of record: James T. Janover and Marcy A. Sandler, 8 Schoolhouse Road, Waccabuc, New York 10597] for a variance of [1] Article IV, §220-23D(11) of the Zoning Ordinance in the matter of an existing accessory building that exceeds 600 square feet (proposed 1445 square feet) in an R-4A, Four Acre Residential District; [2] a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the existing accessory building which is closer to the side line (proposed 25 feet where 50 feet is required) than permitted in an R-4A, Four-Acre Residential District. [3] a Special Permit pursuant to Article V, § 220-40 of the Zoning Ordinance in the matter of a proposed accessory apartment in an existing accessory building.

The property is located on the south side of Schoolhouse Road, designated on the Tax Map as Sheet 21, Block 10801, Lot 51, in an R-4A, Four-Acre Residential District.

Mr. Sirignano, Esq. was present to represent the applicant at the February 27th meeting.

Chairman Egginton stated that a site walk was conducted on the morning of February 23rd.

Mr. Krellenstein stated that essentially the applicant is refurbishing an existing building; therefore there will be no increase in the footprint. He stated that the kitchen facilities were existing. Mr. Krellenstein stated that while the structure will be greater than 600 square feet, it is essentially the same. He stated that the old building had some decrepitude, it was a large property, and it is not obtrusive in the context of the property.

Mr. Price stated that the building has been there since the 18th century.

Chairman Egginton commented that the building probably has a stone foundation.

Mr. Sirignano commented that it was an old cider building. He stated that both neighbors have approved of the proposed plans.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. There were no comments from the public. Chairman Egginton moved that the application be approved as presented for the following reasons:

- That there will be no undesirable change in the character of the nearby property;
- That there is no practical alternative to the requested variance, it is in the same location as the existing building;
- That the area variance is more than de minimis, it fits the site ;
- That there will be no adverse environmental impact;
- That the difficulty is not self-created, it is an improvement;

Chairman Egginton stated that the application meets all of the criteria of the Zoning Ordinance for a Special Permit. He stated an application for a Special Permit unlike a variance, is a legislative finding by the Town Board not the Zoning Board of Appeals that if it meets the criteria of the ordinance then the permit must issue. Chairman Egginton stated for all those reasons he moved that the application for a Special Permit be approved as presented for a period of 10 years.

The motion was seconded by Mr. Price; In favor: Mr. Price, Mr. Krellenstein and Chairman Egginton; To deny: None; Absent: Mr. Casper and Ms. Mandelker; Abstained: None;

CASE CLOSED.

CAL. NO. 05-13-BZ

Application of William Bocchino, Katonah Management Group, 2 Carter Street, Croton Falls, New York 10519 [Owner of Record: Meadows III Board of Managers, Building 39 Jay Court, Units 165-169, Cross River, New York 10518] for a variance of Article III, §220-12E(1) of the Zoning Ordinance in the matter of proposed fencing 8' in height, where 4' is allowed.

The properties are located on the north side of Route 35, designated on the Tax Map as Sheet 17D, Block 10533, Lots 365-369, in an R-MF, Residential Multi-Family District.

Mr. Bocchino was present at the February 27th meeting.

Chairman Egginton stated that a site walk was conducted on the morning of February 23rd. He read a letter from Ms. Pfeffer, 126 Woodcock Knoll and Ms. Smith, 127 Woodcock Knoll into the record dated 2/23/13 and a letter from Mr. and Mrs. Sarcuni dated 1/31/13. Chairman Egginton stated that he lived on Mark Mead Road for 27 years and visited the Meadows complex on many occasions and is very familiar with the layout.

Mr. Krellenstein asked if the condo board approved the fences.

Mr. Bocchino responded that the board approved the application to the Zoning Board to see if they could get approval from the town. He stated that there are 4 boards in the complex.

Mr. Krellenstein asked if the applicable condo board voted on this application and approved it.

Mr. Bocchino responded that they voted to approve applying to the town.

Mr. Price asked why they want to change now.

Mr. Bocchino stated that they do not get the growth of the arborvitae in that location.

Chairman Egginton stated that it sets precedent and is a slippery slope. He stated that although Ms. Mandelker is not in attendance tonight, she was concerned about the precedent and the appearance of the fence compared to the appearance of the decks with the arborvitae.

Mr. Krellenstein stated that he would be disposed to deny the application because it is a radical change from what the people bargained for. He stated that it is a vast departure from trees to put up PVC fencing between people's houses when it affects the rest of the people in the condo. Mr. Krellenstein commented that it doesn't seem to fit the criteria for granting a variance. Mr. Krellenstein stated that he is just one vote but his personal view is to vote against this. He stated that the residents served and the board would benefit from examining other alternatives that are more consistent with the look and feel of the condo.

Mrs. Sarcuni, 128 Woodcock Knoll stated that the feel of the condo is open and she is not denying anyone their privacy.

Ms. Pfeffer stated that she agrees with Mr. Krellenstein's view.

Mr. Angelo Batista, 167 Jay Court asked if they plant trees would they have to apply to the ZBA.

Chairman Egginton responded no, they would have to apply to the condo association.

Mr. Sarcuni, 128 Woodcock Knoll stated that there are 54 units on the property and it is a slippery slope.

Chairman Egginton stated that there is a quorum tonight and asked if the applicant wished to hold the application over until next month when the other 2 members are present.

Mr. Krellenstein stated that the applicant can request an adjournment tonight and the application will be placed on the March agenda.

Mr. Bocchino asked if he could poll the board.

Chairman Egginton stated that the applicant does not have his vote.

Mr. Bocchino stated that his impression is that he would not have 3 votes at the March meeting.

Mr. Krellenstein moved that the application be denied as presented because it does not meet the criteria

- That there will be an undesirable change in the character of the nearby property, it would be inconsistent with the public harmony of the neighborhood and detrimental to the public;
- He stated that he did not think that by denying the application, they have deprived the applicants the use of the property, in fact most of the properties are separated by more appropriate natural fencing, consisting of trees;
- That there is a practical alternative to the requested variance;

The motion was seconded by Mr. Price; To deny: Mr. Price, Mr. Krellenstein and Chairman Egginton; To Approve: None; Absent: Mr. Casper and Ms. Mandelker; Abstained: None;

CASE CLOSED.

CAL. NO. 06-13-BZ

Application of Judith Gerst, 22 Deerfield Lane, Katonah, New York 10536 for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the “As Built” breezeway that is closer to the rear lot line (existing 5’ where 30’ is required) in an R-½, One Half Acre Residential District.

The property is located on the south side of Deerfield Lane, designated on the Tax Map as Sheet 9C, Block 10793, Lots 68-75, in an R-½, One Half Acre Residential District.

Mrs. Gerst was present at the February 27th meeting and accompanied by Jeffrey Kane, Esq.

Chairman Egginton stated that a site walk was conducted on the morning of February 23rd. Chairman Egginton read an email from Thomas Rinaldo, 17 Sunset Drive dated February 25th 2013 and an email from Laurie Evans, 2 East Mountain Road dated February 25th 2013 into the record.

Mrs. Gerst stated that she has lived in town and has always abided by the laws and regulations. She stated that she used poor judgment because the breezeway addition was not as near the property lines as the other structures that have received variances. Mrs. Gerst stated that building the breezeway was for practical reasons to help negotiating to the house. She stated that she is a retired speech therapist from the NYC Board of Education Southern Boces and her spouse died in 2003. Mrs. Gerst stated that it is basically her son and herself. She stated that she made a mistake and hopes that the ZBA will find the merits of her application.

Mr. Kane stated that they are acknowledging that the hardship is partially self created.

Mr. Krellenstein stated that he is sympathetic to the issues but they do not form part of the application. He stated that it is not his desire to be arbitrary but the “as built” applications are a slippery slope and the applicant has received two variances before. Mr. Krellenstein stated that it looks like the car port that the applicant received a variance for is now a garage.

Mrs. Gerst responded that John Winters built the car port and told her that she could enclose it which she did.

Mr. Krellenstein stated that the applicant received a variance for a car port not a garage.

Mrs. Gerst responded that she did not build a garage, she just closed the openings.

Mr. Kane stated that they acknowledge that there are walls on the car port.

Mr. Krellenstein stated that it is hard to be sympathetic. He stated that the applicant received a variance for a car port and they can discuss the semantics of what makes a car port into a garage because whatever those are, the applicant has already done that. Mr. Krellenstein stated that the applicant has structures that look to be over onto the neighbor's property. He stated that the applicant built a very elaborate car port after receiving two variances without receiving a variance for the breezeway or the garage. Mr. Krellenstein stated that the alternative is to force the applicant to take it down. He stated that he is uncomfortable voting on an "as built" application. Mr. Krellenstein stated that he would like to say no "as built" applications unless you purchased the house with it. He proposed carrying the application over until next month, so that the applicant might have three votes next month. Mr. Krellenstein stated that he would not support the application tonight.

Chairman Egginton stated that he would be inclined to hold the application over so that he could go out for the site walk.

Mr. Price stated that he is concerned about the encroachment onto the neighbor's property with the garden. He stated that it is clearly over the line by a lot. Mr. Price stated that the "as built" breezeway is too close to the line. He stated the applicant received a variance for a car port and now it is a garage built without a permit or variance. Mr. Price stated that there are three issues that he is deeply concerned about. He stated that he will not support the use of the neighbor's property in any way.

Mr. Kane asked if the ZBA would recommend that the applicant address the issue of the garage with an application.

Mr. Krellenstein stated that it is another "as built". He stated that he would not comment on it because the applicant would be asking to have two "as built" applications approved.

Mr. Price stated that the applicant is in violation with both.

Chairman Egginton asked if a building permit was issued for the breezeway.

Mr. Kane responded that it is "as built".

Mrs. Gerst stated that it would be a financial strain if she had to take it down.

Mr. Krellenstein stated that he is sympathetic but it is two "as built" applications. He stated that he is not trying to be arbitrary.

Mrs. Gerst stated that she never did this before.

Mr. Krellenstein responded that actually the applicant did build a car port and then turned it into a garage.

Mr. Kane asked if a public hearing notice would be sent out.

Ms. Posadas responded yes.

Mr. Kane stated that they would amend the application.

Mr. Krellenstein stated that it would be best to hold the application over for two months and in the mean time apply for the car port. He stated that then the public hearing notices would be sent out.

Mr. Kane asked if the ZBA would conduct another site walk.

Chairman Egginton stated that he would go out to the site.

Mr. Kane stated that they would submit for the April ZBA agenda.

Mr. Krellenstein asked if there is an accessory apartment on the property.

Mrs. Gerst responded no, it is a one family house.

Mr. Krellenstein stated that the minutes from the previous month reflect that there is a separate apartment.

Mrs. Gerst stated that she made a little area for her son, so that her son could feel independent.

*Mr. Casper arrived.

Chairman Egginton stated that the application is held over until April.

THE PUBLIC HEARING IS HELD OPEN.

III. NEW BUSINESS/CORRESPONDENCE