



gazebo and patio are actually further away from the property line than previously indicated on the application.

Mr. Gemmola reviewed the amended plot plan dated November 20, 2013 which correctly located the existing gazebo and patio. He reviewed the plans for the original deck built in 1988 and advised that the property owner believed that because the ZBA in 1988 stated that the stonework is considered landscaping and no concern of the Board, that the subsequent work he did would not affect the variance.

Mr. Bastardi displayed a board with seven photographs depicting the row of existing pine trees and the stonewall. He discussed the tree damage done to his deck and residence and submitted 17 photographs of the storm damage. Mr. Bastardi submitted a petition signed by 15 neighboring property owners within a 200 foot radius of his home to save the gazebo along with the corresponding map of the surrounding properties.

Chairman Egginton moved that the application be approved as amended based on the revised survey dated November 7, 2013 indicating a greater distance away from the side yard lot line than shown on the previously submitted architectural plans, the architectural plan SY-102 revised November 20, 2013 indicating the correct survey dimensions, the November, 2013 petition signed by the adjacent homeowners, and photographs submitted by the homeowners depicting storm damage to his property.

The motion was seconded by Mr. Casper; In Favor: Mr. Krellenstein, Mr. Price, Chairman Egginton, and Mr. Casper. Absent: Mrs. Mandelker. To Deny: None.

**CASE CLOSED**

**Cal. #19-13-BZ/SP**

**Application of Scott Harris, 48 Cross Pond Road, Pound Ridge, New York, 10576 for a variance of [1] a Special Permit pursuant to Article V, § 220-40 of the Zoning Ordinance in the matter of an As-Built accessory apartment in an existing accessory structure;[2] Article IV, § 220-23D(11) of the Zoning Ordinance in the matter of an existing accessory structure to exceed 600 square feet (total floor area 1440 square feet proposed) in an R-2A, Two Acre Residential District.**

**The property is located on the north side of Cross Pond Road, designated on the Tax Map as Sheet 41, Block 10264, Lot 9, in an R-2A, Two-Acre Residential District.**

Scott Harris was present.

Chairman Egginton noted that the Board had visited the property again on Saturday November 16<sup>th</sup> and that it was his understanding that all of the pending violations had been addressed.

Mr. Harris advised that he had completed those items that did not require a building permit. A plan for the structural work requiring a permit has been filed and reviewed by the Building Inspector. It was noted that a building permit would not be issued until a variance is granted.

Mr. Krellenstein referred to Section 220-40.1G, which although deals with accessory residence dwellings, he believed is contextually relevant. He noted that this section stated that "Further, the accessory use of renting of rooms shall be strictly prohibited in both the principal and accessory residence dwellings..." Mr. Krellenstein stated that this section states to him that the code does intend that if an accessory apartment exists on this site, the principal dwelling should be subject to the accessory renting of rooms. He noted that although this is not an accessory residence dwelling, he believed that the implication is still the same. If there is an accessory apartment or another accessory use on the property, the principal

dwelling should not be one that has accessory renting of the rooms, which has been the case in this situation. He wanted the record to reflect that because of this, as well as for other reasons, that he was not prepared to approve this application. He further referred to Section 220-40F which states that "All accessory apartments, whether in the principal dwelling building or an accessory building, must meet the standards of the Town of Lewisboro Housing Code and regulations." He does not believe that this is the case right now, although he understood the Board could condition their approval on achieving those criteria. There are some issues of credibility in this instance that suggest to him that this property has been utilized as a rooming house, which is not consistent with the code as this does change the character of the neighborhood. The neighbors have certainly been vocal and continue to be vocal in their opposition of this application. For these reasons, he will not approve this application.

Mr. Casper questioned whether the zoning enforcement officer saw the renting of a room as a violation.

Mr. Krellenstein noted that the applicant previously stated that he rented a room in the main residence as well as renting the apartment. In his view, the code does not contemplate the property as being used as a multiple dwelling area.

If it is not appropriate for the applicant to rent rooms, Mr. Casper did not know that the Board could act on the application until the Building Inspector opined. If there is a violation, he preferred that the Building Inspector bring the matter before the municipality by issuing a violation. Until such time that the violation is resolved, the Board should not vote on this application. He believed that the violation by admission left the Board in an awkward position, which is enough for him to want to hold off until the Building Inspector informs this Board as to whether this a violation.

Chairman Egginton read the November 18, 2013 e-mail addressed to the Zoning Board of Appeals from Dr. B. Kassel, J. Oliva, R. Peter Afif, B. Mayer, J. Zline, R. Rinaldi and W. Stein into the record.

Chairman Egginton agreed with Mr. Casper's suggestion to hold this application over to give the Building Inspector an opportunity re-inspect the premises so that this Board can understand exactly what he declares is a violation and determines what the situation is in the main house.

Based on Mr. Krellenstein's statement, Mr. Casper stated that this Board should be informed as to the legality of renting a room in the main dwelling.

Mr. Krellenstein clarified that the section of the code that he read from applied to an accessory residence dwelling, not an accessory apartment. He borrowed and applied the terminology because he believes that the concept is the same; if there is more than one residential structure on the premises, he does not believe that the code intends that rooms be rented in one and the accessory apartment. He further noted that the code does not mention kitchens, only that the renting of rooms is strictly prohibited.

Mr. Harris stressed that he is not an absentee landlord; this is the only address he has had for ten years. He does travel and spends time with his girlfriend in Brooklyn. He further noted that he has been renting spaces for ten years with no problems until he had one bad tenant. When the Building Inspector first came to his house, Mr. Harris advised that he told him that he rented a room in the house as well as the accessory apartment. The only concern the Building Inspector had was with the space being rented in the house as it could not contain housekeeping facilities. He noted that the room had a dormitory refrigerator, microwave, sink and counter; all have since been removed. He noted the other violations that he was cited for and indicated that they had all been addressed with the exception of a window, which required a building permit.

Barry and Lynn Kassel, 46 Cross Pond Road were present. Dr. Kassel advised that the term “rooming house” had come up because there appeared to be four to six people in the apartment and a similar number in the main house. Although it seemed that Mr. Harris is around more now, there was a time that he was not on a regular basis. The question of concern for the neighbors was whether approving this application would open the gates for a rooming house.

In response to a question of Mr. Price as to whether he would continue to rent rooms in the main residence as well as the accessory apartment, Mr. Harris advised that he would if the code permits him to do so.

In response to Dr. Kassel’s concern with issues should the application be approved, Mr. Krellenstein referred to Section 220-40F, which gives the Building Inspector the authority to inspect the premises.

The hearing is held open pending the Building Inspector’s inspection of the premises and determination as to whether the code permits the renting of rooms in the main residence and an accessory apartment.  
**THE PUBLIC HEARING IS HELD OPEN.**

- **NEW BUSINESS**

**CAL. NO. 37-13-SP**

**Application of Anthony and Annemarie Mendola, 1320 Route 35, South Salem, NY 10590 for the renewal of a Special Permit pursuant to Article IV, § 220-23A (9) and Article V, § 220-38 of the Zoning Ordinance to allow the storage of Contractor’s Equipment.**

**The property is located on the north side of NYS Route 35, designated on the Tax Map as Sheet 39, Block 10543, Lot 39, in an R-2A, Two-Acre Residential District.**

Anthony Mendola was present.

The Board acknowledged receipt of the November 8, 2013 inspection report indicating that the yard is neat and clean as well as the list of equipment being stored on site. Chairman Egginton noted that if the site is in compliance, the Zoning Board of Appeals must approve the renewal of the special permit.

Mr. Price questioned whether the stockade fence had been completed and was advised by Mr. Mendola that it was not, there is approximately ten sections that needed to be installed.

Chairman Egginton moved to approve the application as presented based on the November 8, 2013 inspection of Mr. Bauer with the proviso that the applicant completes the stockade fence within six months. The special permit renewal is granted for a period of two years as it meets the criteria. The motion was seconded by Mr. Price; To Approve: Mr. Krellenstein, Mr. Price, Chairman Egginton, and Mr. Casper. Absent: Mrs. Mandelker. To Deny: None.

**CAL. NO. 38-13-BZ**

**Application of Deborah & David Phillips, 5 Sky Top, Katonah, New York 10536 for [1] a variance of Article III § 220-9D (2) and [2] Article IV § 220-23E of the Zoning Ordinance in the matter of an increase in non-conformity other than use due to the proposed addition on an existing residence that is closer to the front property line (proposed 25’.07” where 30’ is required) and closer to the**

**street center line (40' proposed where 55' is required) in an R-1/2A, One-Half Acre District.**

**The property is located on the west side of (#5) Sky Top, designated on the Tax Map as Sheet 9C, Block 10794, Lot 34, in an R-1/2A, One-Half Acre Residential District.**

Deborah Phillips was present.

Chairman Egginton advised that the Board walked the site on Saturday, November 16<sup>th</sup> and met with the homeowner and architect.

The Board members were in agreement that the application as presented should be approved.

Chairman Egginton moved to approve the application as presented for the following reasons:

- There will be no undesirable change to the character of the neighborhood or detriment of nearby properties as a result.
- There is no alternative to the requested variances; it is a modest addition.
- The requested variance is not substantial.
- There is no adverse effect or impact on the physical or environmental conditions of the neighborhood.
- Although the difficulty is self-created, it is not relevant.

The motion was seconded by Mr. Krellenstein; In Favor: Mr. Krellenstein, Mr. Price, Chairman Egginton and Mr. Casper. Absent: Mrs. Mandelker. To Deny: None.

**CASE CLOSED.**

Mr. Krellenstein moved to adjourn the meeting at 8:20 P.M. The motion was seconded by Chairman Egginton; In Favor: Mr. Krellenstein, Mr. Price, Chairman Egginton, Mr. Casper. Absent: Mrs. Mandelker. To Deny: None.

Respectfully submitted,

Aimee M. Hodges  
Secretary, Zoning Board of Appeals