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ZONING BOARD OF APPEALS

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.



Meeting Minutes

May 19, 2015

The members present were: Chairman Cannistra, Mr. Guyot, Mr. Harden, Mr. Prince, and Mr. Santaroni. Mr. Carpaneto was absent.

Building Inspector Efreem Citarella, the applicants and interested residents were also present.

Chairman Cannistra opened the meeting at 7:35 p.m. with the Pledge of Allegiance.

APPLICANT:

ANNMARIE LORD – BZ05/15 – 48.17-1-5 (CARRY OVER)

An application for Area Variances for a detached garage; to build a detached garage in the front yard; and a front yard variance, located in an R-80 Residential Zoning District at **7 South Lane, Katonah**. The property is shown on the Town Tax Map as **Section: 48.17, Block: 1, Lot: 5**. RE: Section Schedule 170:A1 – Note 2; 170:A1; and 170-11A.

At the April 21, 2015 meeting, all Board members agreed do a site visit and adjourn the meeting until this evening.

Robert Lord addressed the Board. He is seeking a 3' variance for a detached garage from the existing dwelling, as well as a 27' front yard variance. The proposed detached garage will be attached to the existing dwelling with a covered breezeway. It has one garage door, but can accommodate two cars. The garage has been moved forward 5 feet to keep it further away from the large oak tree and is up to the edge of the drip line. Although the garage will be very close to the road, there is nowhere else to put it as the back of the yard has steep slopes, wetlands and sanitary fields. There will be no plumbing or kitchen facilities in the garage, only electricity as the second floor will be

used for an office. The roof height of the garage will not exceed that of the height of the existing dwelling. There will be drainage around the base of the garage.

In addition, the applicant is seeking a 16' rear yard variance for a new screened in porch.

Mr. Guyot made a motion for a Type II Action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Mr. Guyot made a motion to grant a 3' variance from the existing dwelling, and a 27' front yard variance for a new detached garage, as well as a 16' rear yard variance for a new screened in porch. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The variances were granted.

BODO AND HELEN FISCHER – BZ06/15 – 48.13-1-11

A renewal application for a Special Exception Use Permit for an existing accessory apartment, located in an R-80 Residential Zoning District at **3 North Lane, Katonah**. The property is shown on the Town Tax Map as **Section: 48.13, Block: 1, Lot: 11**. RE: Section Schedule 170-70.

Bodo Fischer addressed the Board. A friend lives in the accessory apartment and they live in the single family dwelling. Mr. Citarella confirmed that he has inspected the apartment and there have been no changes. It meets all code requirements, and there have been no complaints or violations.

Mr. Prince made a motion for a Type II Action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Mr. Prince made a motion to grant the renewal application of the Special Exception Use Permit for a period of seven (7) years as per the Code. Mr. Harden seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Special Exception Use Permit was granted.

KATHIE AND MAGDY MAHMOUD – BZ07/15 – 38.13-2-25

A renewal application for a Special Exception Use Permit for an existing accessory apartment, located in an R-80 Residential Zoning District at **17 Frances Drive, Katonah**. The property is shown on the Town Tax Map as **Section: 38.13, Block: 2, Lot: 25**. RE: Section Schedule 170-70.

Kathie and Magdy Mahmoud addressed the Board. Their friends live in the accessory apartment and they live in the single family dwelling. It meets all code requirements, there have been no changes, complaints or violations, and Mr. Citarella confirmed that he has inspected the apartment.

Mr. Santaroni made a motion for a Type II Action. Mr. Harden seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye

Mr. Santaroni Aye
Chairman Cannistra Aye

Mr. Harden made a motion to grant the renewal application of the Special Exception Use Permit for a period of seven (7) years as per the Code. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot Aye
Mr. Harden Aye
Mr. Prince Aye
Mr. Santaroni Aye
Chairman Cannistra Aye

The Special Exception Use Permit was granted.

GIACCHINO AND THERESA ASTE – BZ08/15 – 26.19-1-15

An application for an Area Variance for less than the required side yard set-back, located in an R-40 Residential Zoning District at **25 Hilltop Drive, Yorktown Heights**. The property is shown on the Town Tax Map as **Section: 26.19, Block: 1, Lot: 15**. RE: Section Schedule 170-A.1 of the Zoning Schedule.

Houlihan-Lawrence Realtor Christine MacDonald addressed the Board on behalf of the applicant, who is requesting a side yard variance for their existing 10' by 12' shed. It is on concrete fittings. They did try to no avail to move it using jacks and a backhoe. The shed is one story, has a peaked roof, is structurally sound and is used for storage. There is an existing 15' hedge along the property line making it not visible from neighbors. A letter of support was received from MDS Associates, a partnership of the owners of the adjoining property.

Mr. Santaroni made a motion for a Type II Action. Mr. Harden seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot Aye
Mr. Harden Aye
Mr. Prince Aye
Mr. Santaroni Aye
Chairman Cannistra Aye

Mr. Guyot made a motion to grant a 10.8' side yard variance for the existing shed. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Area Variance was granted.

MICHAEL AND GINA SOMOZA – BZ09/15 – 36.12-3-3

An interpretation of a treehouse – playhouse. An application for an Area Variance for a treehouse, located in an R-80 Residential Zoning District at **2526 Route 35, Amawalk**. The property is shown on the Town Tax Map as **Section: 36.12, Block: 3, Lot: 3**. RE: Section Schedule 170-3 and 11.

Michael and Gina Somoza addressed the Board. They are seeking an interpretation of an existing treehouse that has been on their property for the past 8 or 9 years. If it is determined that a treehouse is a playhouse, then they are seeking a side yard variance of 13.2'. The treehouse is 8' by 8', sits about 6 ½ to 7' off the ground, is 8' tall plus the 4' pitch of the roof. It is approximately 200' from the nearest neighbor's dwelling. There is no electric or plumbing in the treehouse, but there are 4" by 4" posts that are set in concrete footings that go below the frost line at the base. They are for decorative purposes only. There is an electrical outlet in one of the posts, and it has been inspected. Cut out openings to resemble a doorway and windows exist, as well as a ladder type stairway leading up to it. The treehouse is checked on a regular basis to be sure that it is structurally sound. It is sided to match the existing dwelling. The way in which it was constructed was explained. A building permit is not required. Although it is not used that often anymore, it remains an important part of the applicant's children's childhood. It can't be moved as there is no other location on their property for it. The applicant received a violation from the Building Department regarding the treehouse. They appeared in Town Court and were sent to the Zoning Board for a ruling.

The neighbor's (Bruce and Brigitte Davison) Attorney Andrew Brodnick addressed the Board. In his opinion, the treehouse is an undesirable and intrusive change in the character of the neighborhood; it has no benefit since the youngest child of the applicant is 13 years old and has had the opportunity to utilize it since she was 4 or 5 years old; it is an 88% deviation from the required set-back; the hardship was self-created; and trees on both properties were illegally removed prior to its construction. Esquire Brodnick also feels that since you play in a treehouse, it is also a playhouse. His client has a

clear view of the treehouse and in his opinion, it would not be a burden for the applicant to move or remove it.

Bruce and Brigitte Davison, owners of 2522 and 2524 Route 35 approached the Board. One of the first things the Somoza's did when they move in was to remove 40 to 60' high trees on either side of the property line. About a year later, the treehouse was built. The treehouse has a telescope in it, which they feel is an invasion of their privacy as it faces their backyard (picnic area, hot tub), bathroom and daughter's bathroom. The treehouse wouldn't be that visible if the trees weren't removed. When the leaves are on the trees it is not easily able to be seen, but is exposed in the winter. The applicant is not willing to compromise with this situation as it has caused trauma to their family, and they want the treehouse removed. They feel as though they have to fight for their property rights at this point.

A letter from the neighbors across the street (2523 Route 35), Anita Larsen and Cliff Wiesel, was presented by the Davisons. They have concerns over the set-back requirement and the telescope. Another letter was submitted by the Davisons from Jennifer Mastafiak of 2340 Route 118. She has concerns over the telescope. Linda Brenner of 19 Bedell Road addressed the Board. She too has concerns about the set-back issue and the telescope.

Esquire Brodnick shared a ruling from the Town Attorney that a treehouse is a playhouse.

Mr. Harden made a motion for an interpretation as to whether or not a treehouse is a playhouse. Mr. Guyot seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

A treehouse is a playhouse.

Since a full Board was not present, a decision was made to take a straw poll vote as to whether or not those present would be in favor of granting the variance.

A straw poll vote was then taken by the Board as follows...

STRAW POLL OF THE BOARD

Mr. Guyot	Not in favor
Mr. Harden	Not in favor
Mr. Prince	Not in favor
Mr. Santaroni	Not in favor
Chairman Cannistra	Not in favor

Mr. Prince made a motion for a Type II Action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Mr. Guyot made a motion to deny the side yard variance of 13.2' for an existing treehouse. Mr. Harden seconded the motion.

A vote was then taken by the Board as follows...

POLL OF THE BOARD

Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Prince	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Area Variance was denied.

OTHER BUSINESS:

A motion was made by the Chairman to approve the minutes of the April 21, 2015 monthly meeting. All were in favor.

As a result of vacation schedules, the Board will not meet in August.

The next monthly meeting of the Zoning Board of Appeals is scheduled to be held on June 16, 2015. There being no further business, the meeting was adjourned at 9:35 p.m.

Respectfully submitted,

Denise Schirmer, Secretary
Zoning Board of Appeals

cc: Town Board
Town Clerk
Planning and Engineering
Planning Board