

Town of Washington Zoning Board of Appeals
Meeting Minutes
October 18, 2022
Draft for Approval

The Town of Washington Zoning Board of Appeals met on Tuesday, October 18, 2022 at 7:30pm for the discussion and Public Hearings regarding the following applications:

Daniel Yadgard: Area variance for a pool installation at 610 Stanford Road, Parcel #042590

Jade Zimmerman: Area Variance for a pool installation at 88 Oak Summit Road, Parcel #180458

CAC Request for Interpretation: Interpretation of Section 391 of the Zoning code

ZBA members in attendance in person were: Chair John Parisi, Katherine Briggs, Frank Redl, Fletcher Coddington and Peter Audia. Also attending in person were consultant Aaron Werner, and CAC member Howard Schuman. Attending via Zoom was consultant Alicia Moore from AKRF, filling in for consultant Aaron Werner, as well as Town Board member Leslie Heaney.

Chair John Parisi called the meeting to order at 7:29pm.

Chair Parisi asked for a motion to approve the September 20, 2022 meeting minutes. Member Redl made the motion, seconded by Member Coddington. The vote is as follows:

Chair Parisi ___ AYE ___
Member Coddington ___ AYE ___
Member Audia ___ AYE ___
Member Redl ___ AYE ___
Member Briggs ___ AYE ___

Chair Parisi announced the application for the 88 Oak Summit Road for an Area Variance concerning a pool installation. David Katz, builder and designer, was representing owner Jade Zimmerman. Mr. Katz handed out site surveys to Board members and explained that the majority of the property is wetland. The proposed pool is outside of the wetland but within the buffer. Mr. Katz went on to explain that he positioned the pool in the only place possible that was outside the wetland. It is next to the house, on an even line with the front of the house. The house is already nonconforming in the front. The width of the pool has been reduced. Mr. Katz used the survey to show the Board the location of the wetland, the shed, the house and the pool. Existing trees nearby will be preserved. The applicant is also creating a landscape buffer for privacy around the pool.

Chair Parisi asked for some clarification of the location of the wetland on the survey and asked if it was a recent survey. It was a recent survey as discussed between Mr. Katz and Mr. Werner.

Mr. Katz also showed satellite images of the property from 2004, 2013 and 2015. He pointed out that there is quite a difference in elevation between the pool and the wetland. The wetland is lower. There is a barrier of existing plants on the property.

Chair Parisi stated that Mr. Werner had said that it should be a new wetland. Mr. Katz replied that Mr. Werner had said that it could be considered new. Mr. Katz went on to state that if the wetland was changed, it would not affect where the pool is located because there is only one area available for the pool installation. He explained that in his experience, the wetland would not expand to that area because the home and proposed pool location are at the highest point on the property. It does not seem to make sense for his client to develop a wetland plan for the pool when there is already a feasible location. He explained that the pool

is further from the wetland than the shed or the house and further from the road than the house. The pool location is in the most sensible grade area with the least amount of disturbance. The trees are not being disturbed, nor is the sight line affected.

Chair Parisi explained that if a survey showed that the wetlands had expanded and the pool was in the wetlands as a result, the property owners would have to go to the Planning Board for a Special Permit. Mr. Katz responded that the wetland would not change so significantly that the pool would be affected.

Member Coddington asked Mr. Katz what the height differential is between the wetland buffer zone and the pool. Mr. Katz stated that it was approximately 12-15 feet.

Member Audia asked if the submitted information included the make-up of the water, whether it was salt water, was there a backwash, an automatic pool cover, etc. Mr. Katz stated that it is a UV Ozone system with a cartridge filter and requires no backwash. The pool is concrete and will have an automatic cover and will require minimal "draw-down" to winterize the pool.

Mr. Katz showed photos of the house and property to the Board to give them some perspective concerning feature of the property.

Mr. Katz added that with his experience in landscape design and landscape architecture, he empathizes with the concern over the environment and the community. That is why the proposed pool installation will cause minimal disturbance. The pool does not encroach on anything any more than any other structure on the property. It is a simple job and the pool equipment is located on the uphill side of the pool. The idea of placing the pool equipment behind the shed came up, but then it would be in the wetland buffer.

Member Redl asked Mr. Katz to clarify the elevations of the property. Mr. Katz pointed out the elevations, as well as the setback. He stated that the photographs show the 8-foot drop-off clearly.

Chair Parisi asked what the setback is from the property line to the pool. Mr. Katz stated that it is 16 feet and 8 inches, which is approximately the same as the house.

Member Audia asked the depth of the pool which is 3 feet deep in the shallow end and 6 feet in the deep end. The shallow end is approximately 20 feet long. It

gradually goes to the 6-foot depth. Mr. Katz stated that there is only a 2-foot differential between the pool and the surrounding land. No excavation is necessary. The pool is not considered to be permanent. It has a substantial amount of gravel underneath.

Member Audia stated that the well is not far from the pool. The septic is on the other side of the house. Mr. Katz stated that there was no requirement for the distance from the pool to the well and that the well would not be impacted at all.

Howard Schuman of the CAC asked Mr. Katz to clarify that the pool is above the buffer and asked if any drainage would be present due to the pool. Mr. Katz replied that the pool is above the buffer and there would be no drainage from the pool. He added that the backfill of the patio is all gravel and drainage is directed to the upside of the pool. Mr. Schuman asked about the plantings planned for around the pool. Mr. Katz replied that he did not think there was any point in disturbing the ground by taking plants out and putting other plants in.

Chair Parisi asked for a motion to open the Public Hearing. Member Redl made the motion, seconded by Member Briggs. The vote is as follows:

Chair Parisi	___ AYE ___
Member Coddington	___ AYE ___
Member Audia	___ AYE ___
Member Redl	___ AYE ___
Member Briggs	___ AYE ___

There were no comments or questions from the Public or those on Zoom.

Chair Parisi asked for a motion to close the Public Hearing. Member Coddington made the motion, seconded by Member Redl. The vote is as follows:

Chair Parisi ___ AYE ___
Member Coddington ___ AYE ___
Member Audia ___ AYE ___
Member Redl ___ AYE ___
Member Briggs ___ AYE ___

Member Redl made a motion to declare this a Type II Action under SEQR and that it does not require any further environmental review. Member Coddington seconded the motion. The vote is as follows:

Chair Parisi ___ AYE ___
Member Coddington ___ AYE ___
Member Audia ___ AYE ___
Member Redl ___ AYE ___
Member Briggs ___ AYE ___

Chair Parisi asked Board members if they were comfortable not having the applicant submit an updated survey. Members felt that the applicant had given ample information. The photos were very helpful to the Board.

Chair Parisi asked for a motion to approve a front yard variance for a setback of 83 feet and 4 inches. Member Redl made the motion, seconded by Member Briggs. The vote is as follows:

Chair Parisi ___ AYE ___
Member Coddington ___ AYE ___
Member Audia ___ AYE ___
Member Redl ___ AYE ___
Member Briggs ___ AYE ___

Representative Andi Eisermann represented applicant Daniel Yadgard for an Area Variance for a pool. Andi explained that the pool would be an 18 X 40-foot swimming pool. She mentioned that there is no place but the backyard to put the pool because it would be too close to the road with no privacy in the front yard. The septic is in the front.

Chair Parisi asked why they did not rotate the pool to be farther from the property line. Ms. Eisermann stated that she could ask the applicant, but she is not sure if they wanted it angled a certain way with the house and patio. Previously submitted photos of the property were viewed and discussed.

Member Coddington asked for the height differential from the wall to the driveway. Ms. Eisermann and Member Coddington estimated the height of the wall to be approximately 8-9 feet.

The pool will be an 18' X 40' gunite pool. The shallow end will be 3 feet and 6 inches deep and the deep end will be 7 feet and 6 inches deep.

Ms. Eisermann stated that the mechanicals for the pool could be put wherever the Board recommends. She and Chair Parisi discussed the fact that they should not go too near the property line or another variance would be required.

Member Coddington asked if the pool fence would go right to the retaining wall. Ms. Eisermann explained that she was not sure how the owner was planning to handle the fencing. Her company goes as far as fine-grading around the pool. The fence and landscaping will be handled by other companies that the owner will hire.

Chair Parisi asked if there would be a walkway around the pool. Ms. Eisermann stated that she really did not know since her company would not be installing anything after the fine-grade. Ms. Eisermann and the Board discussed how the latest trend is to have grass grow right up to the cap of the pool.

Member Audia asked if gunite pools can be heated. They can be heated and usually use propane for heat. Ms. Eisermann stated that some use heat pumps which are not good in this area because they require heat and humidity. Geo thermal heating and solar panels are another option.

Member Briggs asked how large the variance is and Member Redl replied that it would be 40 feet without rotating the pool. By rotating it, the variance would depend on where the pool was placed.

The owners are seeking a rear setback variance of 40 feet in a 75-foot Zone. If the owners rotate the pool, they would gain 10 to 15 feet.

The Board asked when construction was planned to begin. Ms. Eisermann replied that if the variance is approved, they will begin immediately unless the frost is too heavy. The pool company will build until the frost hits, but they cannot dig once that happens.

Chair Parisi asked if the Board was comfortable with where the pool is located. Member Cottingham asked the Chair in the event that an apron is put around the pool, would the owner need a variance for that? The answer was "yes". Ms. Eisermann indicated to the survey and asked if they did not put a concrete pad on the side of the pool towards the rear property line, they wouldn't need a variance. The Board confirmed that she was correct.

The shallow end of the pool is nearest to the patio and the deep end is not conducive to diving. There is no proposed slide. The deep end is only 9 feet long. Ms. Eisermann noted that a lot of people like to hang out in the shallow end which is why it is larger than the deep end.

Member Audia asked what the plan was for water treatment. Ms. Eisermann was not sure whether the owner was going to use chlorine or saline. She asked if the Board preferred one or the other. It did not matter to the Board. Ms. Eisermann stated that it is a cartridge filter, cc 520, with a propane heater. The water level needs to be lowered approximately 8-10 inches in order to winterize the pool. The return lines also need to be "blown out".

She was not sure if the owner had an existing propane tank on the property or if propane was definitely going to be the way to heat the pool.

Member Audia stated that it is difficult to give a variance if the Board does not know if the pool will be rotated or not as well as the location of a possible propane tank.

Chair Parisi stated that the Board needs to know where the propane tank will be located and whether the owner is willing to rotate the pool, or leave it as is, as well as the owner's intentions for concrete around the pool.

Member Redl stated that the Code asks if there is another means to accomplish the goal that lessens the variance, which would be rotating the pool. By rotating the pool, you would still need some variance but not a 40-foot variance.

Member Coddington asked Ms. Eisermann to confirm that the topography of the proposed location of the pool is relatively flat. She confirmed. Member Coddington mentioned that the water line would be affected by rotating the pool. Board members discussed possible locations of the water line and what rotating the pool may entail in relation to the water line. They asked Ms. Eisermann to find the location of the water line and where it comes into the house. It would not be located deep enough for the pool to be constructed over it. Member Redl was concerned that rotating the pool may cause a side yard variance to be required.

The Board asked Ms. Eisermann to come back next month with the following questions answered: location of the water line, location of the propane tank, and the owner's intention for the perimeter of the pool.

Chair Parisi announced the next item on the agenda: the CAC's Request of Interpretation of Section 391 of the Zoning Code. He stated that he had asked Town attorney Sarah Wilson, to write up an analysis of this part of the Code.

CAC member Howard Schuman passed out a letter from the CAC to Board members. The CAC is asking for clarification of Section 391, specifically 391.7. Mr. Schuman began by summarizing the Wendy Wolf and Michael Clark Planning Board application that was recently approved by the Zoning Board of Appeals where the floor space of the existing home was 5,559 feet. It is in the Wetlands buffer. The floor space of the proposed area is 5, 173 feet. The Planning Board were interpreting the Code as if you can increase the new structure 25% more than the existing structure. The law (391.7) says that this is a nonconforming structure and that they can only be given a variance for what existed in 1971. The only structure that existed on the property according to Dutchess Parcel Access, was 480 square feet. Therefore, the new structure could only add approximately 210 feet. The law was written so you cannot keep expanding these nonconforming uses. If you were here in 1971 or earlier, the Code gives you the right to expand only 25%. Homeowners cannot double the size of the building. Mr. Schuman went on to say that the CAC feels that they can only add about 270 square feet to the existing building, which is in the Wetlands. The Planning Board has essentially given the homeowner permission to build a huge new structure. Section 391 now comes into play. It is expanding a nonconforming use of a building. Mr. Schuman explained that if you are increasing the size without conforming the use, Section 391 does allow for a very small increase when certain conditions are met. One condition being that the structure was built before 1991,

another being that you only increase the existing structure 25% of the square footage of the structure built prior to 1991. The Planning Board's approval of the application did not match the conditions of Section 391. That is why it needed to go to the ZBA. Mr. Schuman is concerned about what will happen in the future if there is another similar application. He feels that Acting Chair Richard Philipps of the Planning Board was not looking at the structure as an entirely new structure. He was looking at the new building as 25% of the old building and that is not what Section 391 states. Mr. Schuman stated that he has spoken to other Planning Boards and Zoning Boards, which agree with the CAC.

Member Coddington stated that the homeowner was decreasing the size a bit. Member Audia agreed. Mr. Schuman stated that it was only decreasing by 10 feet. Board members also stated that they are taking down a garage and a cottage, as well as decreasing the size by 10 feet on two floors.

Chair Parisi noted that the existing house was built in 1976. The cottage has been on the property since 1940 and will be demolished as part of the project.

Mr. Schuman stated that the small building, which is not shown on Dutchess Parcel Access, might be in the buffer and the CAC feels that it is the only structure to which the 25% rule applies. He went on to say that if something were taken out, that would be fine. For instance, if the old building were demolished and the homeowners wanted to rebuild, that may be different. Mr. Schuman stated that the owners would need to take out a significant amount of the building in order to match the Code.

Member Audia stated that the owners of the property will end up with less of a footprint than they had before the addition. Member Coddington agreed and Member Redl stated that it would reduce the nonconformity.

Mr. Schuman reiterated that the homeowner proposed, and received approval for, the addition of another 5, 173 square feet to the existing home. He suggested that the homeowner would have to come back to find out if it matches the Code. The CAC is asking that the ZBA include the Code when looking at this application and similar applications in the future.

Member Coddington stated that the Code says that the structure cannot be altered to increase its nonconformity. He explained that the owner is saying that demolishing the garage and the patio space will allow for more space in the nonconforming area.

Mr. Schuman argued that on the application, it states what the existing square footage is and the square footage that they were planning to add.

Chair Parisi stated that according to Town attorney Sarah Wilson, it is not the “use” that is prohibited. Mr. Schuman replied that it is a nonconforming use. Chair Parisi stated that it is a residential use that is permitted. Mr. Schuman stated that once the Wetland Law passed, many pieces of land with houses on them became nonconforming because the Zoning Laws had changed. The houses were able to stay and be used because they were already existing. They became a nonconforming use. Mr. Schuman stated that the Wetlands Law made all those home nonconforming uses in the Code. One part of the Code says you are allowed to have a house here and another part of the Code says you are not allowed to do certain things with your house.

Chair Parisi asked Mr. Schuman where it states in the Code that a house in the Wetland buffer is a nonconforming use. Mr. Schuman replied by reading from Section 148 of the Code. He added that CAC feels that those homes do not conform to the Code and local law.

Member Audia mentioned that Sarah Wilson had already gone over Section 391 of the Code and stated that it does not apply to the Wolf/Clark application. Mr. Schuman stated that the CAC feels that it does apply and that is the reason for the Request of Interpretation of Section 391 of the Code.

Member Audia pointed out that the Code says it ‘may be’ considered nonconforming, not ‘shall’.

Member Coddington added that the owners had some environmental research done on the land within the Wetland zone. Also, part of the proposal included significant landscaping in order to aid the Wetlands. The Wetlands buffer Zone is supposed to protect the fragile environment near the Wetlands, including soils, plant life and animals. He went on to say that this property will be landscaped up to the edge of the pond so that there will be no effect on wildlife, plants and soils. Member Coddington stated that this is one of the reasons that he voted in favor of the Variance. He continued to state that the homeowners are not attempting to build on a swamp. They are choosing to build where there will be no environmental impact.

Mr. Schuman referred to Wetland biologist Steve Marino who was in favor of the application after visiting the site. Mr. Marino observed that this type of expansion would not have been allowed under the present Code. Mr. Schuman

stated that this brings back the interpretation of the Code. The CAC does not mean to say that the homeowners cannot do this, but that the evaluation is performed under the Code. The section of the Code under discussion was included as part of the Zoning Code, not the Wetlands Law. These types of applications should be evaluated from the perspective of the Zoning Code.

Chair Parisi stated that the attorney stated that Section 391 of the Code does not apply to the application. He feels that if it is not clear, then it needs to be modified in the Zoning Code. Mr. Schuman agreed that the Code should always be clear.

Member Coddington asked if the Zoning Ordinance should be a 100-foot setback for all properties, no matter the environment of the property. For instance, if there is a pond in a gully surrounded by granite and someone would like to build a house on the granite berm, with no environmental impact at all... Mr. Schuman explained that the law allows for situations such as if there is a 1-acre landlocked parcel with wetlands on it and the owner wants to build a house, then the owner has a right to do that. If there is a larger parcel and the house could be constructed in an area away from the Wetland, then that should be considered. In the Wolf/Clark application, there were other places where the new construction could take place.

Member Coddington gave the example of a granite quarry filled with water. Should the homeowner still have to stay 100 feet from the edge of the quarry? Mr. Schuman answered that the ZBA would have to look at it but, his personal opinion was that the 100-foot Zoning would still apply. Member Coddington stated that in his opinion, the law is there to protect the environment. If the environment is not going to be negatively impacted by construction on the edge of a quarry, then it is his opinion that the law should not apply. He felt that it is silly to hold somebody back 100 feet from building on rock. Mr. Schuman stated that a lot of people built within the Wetlands and that is how the law came about.

Member Coddington stated that a pond is wet but not a Wetland. Mr. Schuman replied that a pond is a Wetland feature.

Mr. Schuman stated that Section 391 needs to be applied to applications. He continued that there may be other applications that do not involve Wetlands, but Section 391 also applies to those applications. He feels that it was not looked at in detail regarding the Wolf/Clark application. The CAC is asking that it be considered and Interpret Section 391.

Town Board member Leslie Heaney, attending via Zoom, asked Chair Parisi if Ms. Wilson had submitted a written response to the CAC's letter, because it may be helpful for the discussion if she had. He responded that she had submitted a letter. Chair Parisi read Ms. Wilson's letter aloud.

The CAC does not agree with Ms. Wilson that the new construction is not subject to Section 391 of the Zoning Code. The Board stated that they are comfortable with Ms. Wilson's analysis of the Code in this particular situation. Member Coddington wished to make it clear that this is in regard to this particular application. It does not set a precedent.

Mr. Schuman asked the Board if they would agree with Steve Marino that construction is not normally allowed in a Wetland. Chair Parisi stated that if an applicant came in and wanted to build in the Wetland, he would not approve it, but the home is already there. Member Coddington agreed. Member Audia stated that there is an agreement with Steve Marino that he will visit the site every 3 years.

Member Audia asked what the repercussions would be if the homeowner altered the property beyond the scope of the allowance. Member Coddington mentioned the case where a woman bulldozed the wetlands and as far as he knows, there were no consequences.

Chair Parisi asked for a motion to open a Public Hearing for the CAC's Request for Interpretation. Member Redl made the motion, seconded by Member Briggs. The vote is as follows:

Chair Parisi ___ AYE ___

Member Coddington ___ AYE ___

Member Audia ___ AYE ___

Member Redl ___ AYE ___

Member Briggs ___ AYE ___

There were no comments. Member Redl made the motion to close the Public Hearing, seconded by Member Briggs. The vote is as follows:

Chair Parisi	___ AYE ___
Member Coddington	___ AYE ___
Member Audia	___ AYE ___
Member Redl	___ AYE ___
Member Briggs	___ AYE ___

Member Redl made the motion to declare Section 391 inapplicable to the prior application and authorize the Chair to execute the interpretation that was prepared by Ms. Wilson for the meeting. Member Coddington seconded the motion. The vote is as follows:

Chair Parisi	___ AYE ___
Member Coddington	___ AYE ___
Member Audia	___ AYE ___
Member Redl	___ AYE ___
Member Briggs	___ AYE ___

Chair Parisi asked for a motion to close the meeting. Member Redl made the motion, seconded by Member Briggs. The vote is as follows:

Chair Parisi	___ AYE ___
Member Coddington	___ AYE ___
Member Audia	___ AYE ___
Member Redl	___ AYE ___
Member Briggs	___ AYE ___

The meeting concluded at 8:58pm.