

DRAFT
TOWN OF POUND RIDGE
MINUTES OF THE ZONING BOARD OF APPEALS
Meeting of March 21, 2012

The meeting was called to order at 7:30 p.m. by Chairman Les Maron who introduced Board members present, Tom Smith, Larry Brotmann and David Grubb. William Harrington, Deputy Town Attorney and Karen Taft, Board Administrator, were also present. Absent was Murray Levy.

Mr. Maron explained that the applicant first presents his/her case before the Board. Board members, as well as members of the public, may ask questions. The hearing is normally then closed, and the Board members discuss the application. After the hearing is closed, neither the public nor the applicants are allowed to comment.

Mr. Maron said that the Board usually votes at the meeting, but if there is an issue to be resolved, a decision could be held off until the following meeting.

Minutes from the Meeting of July 20, 2011

Mr. Maron made a motion to approve the minutes from the meeting of July 20, 2011, as amended. Mr. Brotmann seconded the motion, and all Board members present, with the exception of Mr. Grubb who was not in attendance at this meeting, voted in favor.

Minutes from the Meeting of October 19, 2011

Mr. Brotmann made a motion to approve the minutes from the meeting of October 19, 2011, as amended, and Mr. Smith seconded. All Board members voted in favor.

Minutes from the Meeting of January 18, 2012

Mr. Smith made a motion to approve the minutes from the meeting of January 18, 2012, as amended, and Mr. Brotmann seconded. All Board members present voted in favor.

Minutes from the Meeting of February 15, 2012

Mr. Smith made a motion to approve the minutes from the meeting of February 15, 2012, and Mr. Brotmann seconded the motion. All Board members present, with the exception of Mr. Maron who was not in attendance at this meeting, voted in favor.

POUND RIDGE LIONS AMBULANCE CORP., P. O. Box 237, Pound Ridge, NY, 10576, for property located at 89 Westchester Avenue, Pound Ridge, NY, 10576, also known as Block 9454, Lot 36. Application for approval to construct a gazebo that would be located 10 feet from the front property line. According to Section 113-37 of the Zoning Code of the Town of Pound Ridge, a 60 foot front yard setback is required in an R-2A zoning district. Therefore, a 50 foot front yard variance is requested.

Mr. Maron recused himself from the application since he is a member of the Ambulance Corps. Mr. Smith chaired this portion of the meeting.

Mr. Marty Kremer, Captain, Ambulance Corps, explained that they are constructing a small park on their property. They propose to install a gazebo in the area of the park. Mr. Kremer said that it will improve the property and will be a resting place. The gazebo will be natural wood with brown shingles that will fade into the landscape. The area is flagged. There will be no electricity or lighting.

Mr. Grubb asked Ms. Taft if any neighboring property owners had contacted her. She replied that no one had. Mr. Peter Avellino, 38 Pine Drive, was present at the meeting. He did not have a complaint with respect to the structure, and applauded the Ambulance Corps for making improvements on the property. He was concerned with the safety issues. Mr. Avellino noted that he was part of the neighborhood association who was against the installation of the cell tower at the Ambulance Corps. Their counsel provided documentation to the Town Board showing safety hazards tied to the possibility of the tower falling. Mr. Avellino's other concern is the possibility of teenagers utilizing the space resulting in large congregations of people hanging out in that area. Another concern was that people may get disoriented with the ambulances going back and forth, possibly resulting in injury. The third issue is the EMF issue, whether perceived or not, from a liability standpoint. He said that both properties are owned by the Town.

Mr. Kremer said that the gazebo would be an inviting addition to the property. Concerning people being disoriented, he felt the statement to be ridiculous. Mr. Smith asked if the pathway continues on past the gazebo. Mr. Kremer said that it could. Mr. Smith said that they have no idea of when the Town portion of the path will be approved.

Mr. Avellino said that the Town and Ambulance Corp's exposure will be increased with the placement of the gazebo, in the event that someone would get hurt. Mr. Brotmann questioned ownership of the property. Mr. Kremer said that the Ambulance Corp owns the property, with a small portion owned by the Town. The Town has given them permission to use it.

Mr. Smith said that in terms of a request for a variance, liability issues are not part of their purview. He saw the opportunity for people to congregate as a positive.

Mr. Kremer said that they cleaned up the front of the building, installed railings, did stonework, and the garden club has been assisting them with landscaping. Ms. Cynthia Rigas, Conservation Board member, asked for clarification of the location of the gazebo. Mr. Kremer said that it is off the path, on the flat area. Mr. Smith said that the sitting area will give people the opportunity to see the two existing foundations that are on the property.

Mr. Smith said that the applicant should address the five standards for obtaining a variance. Mr. Kremer responded:

1. Concerning an undesirable change in the neighborhood.
Mr. Kremer said that it will make the area more attractive.
2. Can the benefit be sought by another method?
Mr. Kremer said that it is the only site for the gazebo.
3. Is the variance substantial?
Mr. Kremer said that it is, but considering it is close to the business district, it fits into the neighborhood.
4. Will the variance have an adverse effect on the neighborhood?
Mr. Kremer said that it will not.
5. Is the difficulty self-created?
Mr. Kremer said that it is not. There is no other location for the structure.

Mr. Smith made a motion to close the public hearing, and Mr. Grubb seconded the motion. All Board members present voted in favor with the exception of Mr. Maron who had recused himself.

Deliberations and Decision –

Mr. Smith said that the proposed gazebo would be an asset to the Town and will help to continue the “village streetscape”. He believed that it would be a good place for children to congregate. Mr. Grubb said that without lighting, it would not create a situation of late night hanging out. Mr. Brotmann also said that it will be a benefit to the Town and is a good idea. Mr. Grubb felt that ambulance drivers are responsible and would look out for pedestrians in the area.

Mr. Smith encouraged Mr. Kremer to not continue the path through the building and across the driveway. He also stipulated that the path to the gazebo be wood chips and maintained. Mr. Brotmann said that approval should be conditioned on no electricity or lighting. Mr. Smith said the gazebo should have a natural or dark finished wood and dark asphalt shingles. With the foregoing stipulations, Mr. Smith moved to approve the application. Mr. Grubb seconded, and all Board members present voted in favor.

MARK FEELEY, 128 Brook Farm Road East, Bedford, NY, 10506, also known as Block 9816, Lot 122. Application for approval to obtain a Certificate of Occupancy for a one story addition to an existing residence that, according to the as-built survey, indicates that the new addition is 48.9’ from the side property line. According to Section 113-37 of the Zoning Code of the Town of Pound Ridge, a 50’ side yard setback is required in an R-3A zoning district. Therefore, a 1.1’ side yard variance is requested.

Mr. John Biddle, contractor for the applicant, was present before the Board. He said that he had done a renovation on the property based on the existing survey. When they did the as built survey, he realized that a very small portion of the addition was in the side yard setback. Mr. Biddle presented the original survey. Apparently, the surveyor had placed the house in the incorrect location on the survey.

Mr. Maron said that when they visited the site, they determined that there would be no visibility from the adjoining properties. Ms. Taft said that she hadn't received any inquiries concerning the application.

Mr. Brotmann made a motion to close the public hearing, and Mr. Grubb seconded. All Board members present voted in favor.

Deliberations and Decision –

Mr. Smith said that the mistake was not made by the contractor. He said that it was a small addition, and was a forgivable error. Mr. Smith made a motion to approve the requested variance, and Mr. Brotmann seconded the motion. All Board members present voted in favor.

ADJOURNED PUBLIC HEARING:

POUND RIDGE HOLDINGS TRUST LLC (Kenneth and Jill Iscol), 63 Lyndel Rd., Pound Ridge, NY, 10576, also known as Block 10047, Lot 43.9. Application to construct a second accessory apartment on the property that is located in an R-3A zoning district. According to Section 113-39A(3), one accessory apartment is allowed per lot.

Ms. Geraldine Tortorella, attorney, was present on behalf of her client. Also present was Nile Washburn, architect with Mind's Eye Architecture & Planning.

Ms. Tortorella said the property is at the end of Lyndel Road. She said that the closest resident to the property is approximately 500 feet away, and the Pound Ridge Reservation is to the west of the property. The property is developed with a main residence and has a few accessory structures including a four-car garage, pool, pool house, tennis court, and a couple of other out buildings on the upper part of the site.

Ms. Tortorella proposed legalizing an existing accessory apartment on the first floor of the lower garage. In 1991, on the first floor, an addition was done to the rear of the lower garage creating an accessory apartment for which a C of O was received. In 1996, the Iscols created an accessory apartment in the second story of the garage which replaced the apartment on the first floor. At that time, they were instructed to remove the stove in the first floor apartment, and the apartment could continue to be used. The stove was removed, but had reappeared in the first floor apartment. Both apartments have continued to be used. Each apartment has one bedroom for a total of two bedrooms in the entire structure. The upper floor apartment is 850 sq. ft., and the lower apartment is approximately 550 sq. ft. Together they are approximately 1,400 sq. ft., which is more than the 1,200 sq. ft. that is allowed in a single accessory apartment.

Ms. Tortorella said that the second floor apartment is utilized by a staff person for the Iscols, and the first floor is occupied by someone in law enforcement to serve the Iscols full time. The utility services for the two apartments are serviced by a single septic system located in the rear of the garage. A letter had been submitted to the Board from Bibbo Engineering indicating that the septic system is sized for two bedrooms. Water is provided by a private well, and has been adequate over time.

Ms. Tortorella said that the Iscols want to continue to be able to use the building in the manner that it is currently being used. The upstairs apartment has a C of O, and it is not part of the application. Ms. Tortorella said that the two apartments have been a form of affordable housing in the Town that is a benefit to the public.

Ms. Tortorella said that the closest property line is 321 feet away from the garage building. There is 344 feet in the other direction to the closest property line, and the closest neighboring house is just 500 feet away from the garage building. There is no occupancy to the west or the south and consequently no impact to the community.

Ms. Tortorella said there is a single main driveway that provides access to the property. Another driveway provides access on the east side of the property, but is not used regularly. Ms. Tortorella said there is no other alternative but to seek the variance in order to maintain the accessory apartment. The code only permits one accessory apartment regardless of the acreage of the site. The Iscol's property is 12 acres, which is four times the minimum acreage in the zoning district. The only other alternative would be to do a subdivision of the property, but would be creating more impervious surface and more disturbance.

Mr. Washburn stated that there will be no change to any of the buildings. Ms. Tortorella stated that if the variance is approved, they will have to appear before the Planning Board. There is no increase in paved area or additional parking spaces proposed on the lot.

Mr. Smith reviewed the code that pertains to accessory apartments. He stated that the owner of the lot where the accessory apartment is located must occupy the principal residence on the property. He asked if the Iscols lived on the property. Ms. Tortorella said that the main residence is occupied by the Iscols. Mr. Brotmann noted that they are not the owners, but it is Pound Ridge Holdings Trust LLC. Ms. Tortorella said that Ms. Iscol is the managing member of the LLC. Mr. Smith said that the code states one accessory apartment per lot regardless of the amount of excess acreage. In addition, Mr. Smith said that the applicant is asking for 1400 sq. ft. where the maximum is 1200 sq. ft. Ms. Tortorella said that the aggregate of the two apartments is over 1200 sq. ft. Mr. Smith said that the code is very clear. Ms. Tortorella believed that it is a numerical limitation, specifically two apartments instead of one.

Ms. Tortorella noted there is no detriment to the community. She realized that this particular application doesn't create a detriment, but there is a possibility of other applicants requesting a similar variance. She said that every application has to be looked at individually.

Mr. Brotmann asked what precipitated the application. Ms. Tortorella said that the Iscols were looking at doing an addition to the pool house. In connection with meeting with the Building Inspector, it was brought to the Iscol's engineer's attention that this condition would have to be rectified first.

Mr. Maron noted that the deed was conveyed from the Iscols to Pound Ridge Trust Holdings, LLC after 30 years. He asked if the LLC had any other holdings. Ms. Tortorella did not have an answer.

Mr. Maron made a motion to close the public hearing, and Mr. Brotmann seconded. All Board members present voted in favor.

Deliberations and Decision –

Mr. Maron said that he was initially troubled by the application until he visited the site. He felt that it was an isolated location, and there was no detriment to the area due to the additional accessory apartment.

Mr. Maron suggested that a condition of approval be that the variance would lapse if there was further subdivision of the property.

Mr. Brotmann stated that is clear that this is a use variance that is being sought. His concern was whether or not the Board is authorized to grant the application where the difficulty with a violation has been self caused. According to the code, dealing with a use variance, there is no flexibility given to self caused as opposed to area variances. Secondly, Mr. Brotmann was concerned that they are substituting their judgment for the judgment of the legislative body. One accessory apartment is permitted regardless of acreage. Mr. Brotmann felt that change would be up to the Town Board. He also was concerned with the precedent that would be set.

Ms. Tortorella had said that she wanted to confer with the applicant concerning the condition relating to the variance becoming void if they further subdivided. Mr. Maron asked Mr. Harrington if they should adjourn the executive session or reopen the public hearing until they received the applicant's reply. Mr. Harrington said that this is a unique situation. He noted that initially it was believed that the accessory apartment ordinance would turn Pound Ridge into a multi-family community. Time has shown that this was not true. Mr. Harrington said they now have a committee that is trying to investigate ways of creating affordable housing opportunities for our residents. The Town Board has been in favor of creating opportunities for affordable housing as they present themselves, given the challenges of the infrastructure and the environment.

Mr. Harrington said that concerning whether this is a use or area variance, there is sufficient discretion viewed by this Board under the law to grant an application notwithstanding the fact that the hardship was self created.

Mr. Maron made a motion to continue the discussion on the Iscol matter until the next meeting. Mr. Brotmann seconded the motion, and all Board members present voted in favor.

CONTINUED PUBLIC HEARING:

HARVEY AND RUTH MILLER, 150 Old Stone Hill Road, Pound Ridge, NY, also known as Block 10047, Lots 38 & 114. Status report from the applicant regarding an application for the following variances: Application to maintain existing solid board fence within the property's front yard that is 6' in height. According to Section 113-38 of the Zoning Code of the Town of Pound Ridge, fences and walls in the front yard shall not exceed four feet in height. Therefore, a

2' height variance is requested. Application to maintain solid board fence on stone wall on either side of pillars and around northern side property boundary that is 7 feet in height. According to Section 113-38 of the Zoning Code of the Town of Pound Ridge, fences and walls in the front yard shall not exceed four feet in height and shall not exceed 6' in height in side yards. Therefore, a 3' height variance for the front yard, and a 1' height variance for the side yard are requested. Application to maintain existing pillars within the front yard and a portion of the side yard that are 2.5 feet wide, 7 feet high and 15 feet separation distance and gate that is 7 feet high. According to Section 113-38 of the Zoning Code of the Town of Pound Ridge, pillars and gates up to 2 feet wide and extending to a maximum height of six feet shall be permitted. The overall height of a gate may be no higher than five feet. Pillars, gates or other barriers shall not be placed any closer than 16 feet apart. Therefore, a 6" width variance, 1' height variance, 1' width variance for the separation distance of the pillars and a 2' height variance for the gate are requested. Application to maintain existing generator and accessory enclosure that is 14'5" within the southern side yard setback and 57'7" from the front property line. According to Section 113-37 of the Zoning Code of the Town of Pound Ridge, accessory structures are required to be 50 feet from the side property line and 60' from the front property line. Therefore, a 35'7" side yard variance and a 2'5" front yard variance are requested.

In addition, the applicant is requesting approval to reduce the height of the existing 8' high black chain link fence that is located within 8 feet of the south side property line to 6'. According to Section 113-38 of the Zoning Code of the Town of Pound Ridge, chain link fences are prohibited within 30' of a property line. Therefore, a 22' side yard variance is requested.

Mr. Maron said that the application was on the October, 2011 agenda. It was continued awaiting further information from the applicant. He said that it has been five months, and they did not hear anything. They requested that the applicant report to the Board.

Ms. Tortorella, attorney for the Millers, was present before the Board. She said that she had submitted a status report letter. They have been exploring an alternative location for the generator that would meet the setback requirement. Ms. Tortorella said that it has been difficult getting generator contractors to the site. They are close to revising the site plan that will show the new location. Ms. Tortorella said that she will meet with the Building Department to confirm that the location is acceptable. She hoped to have the matter back to the Board next month.

Ms. Tortorella said that they still want to pursue the fence, gate and pillar variances. She wrote to the Fire Department for feedback on whether they felt the separation distance between the pillars was acceptable or not. Ms. Tortorella is following up with them.

Mr. Maron clarified that the applicant is relocating the generator so that a variance won't be required, but all the other variance applications are still valid. Mr. Smith questioned the propane tanks. Ms. Tortorella said that she is exploring whether they can leave the existing propane tank in the existing location, but it is a building and fire code compliance issue. They are also exploring an alternate location for the propane tank.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,
Karen B. Taft, Administrator, ZBA