



**Town of Shawangunk
Zoning Board of Appeals
February 15, 2023**

Minutes of a Public Hearing held by the Town of Shawangunk Zoning Board of Appeals on February 15, 2023, at 7:00 PM at the Town Hall, 14 Central Avenue, Wallkill, New York, County of Ulster for the following:

Present Were: Mr. Dennis Arluck, Chairman, Mrs. Susan Wiand and Mr. Ryan Reid as Members. Also present were Mr. Richard Hoyt, Town Attorney, Mr. Robert Wallner, Building Inspector and Mr. Alex Danon, Town Councilman, and members of the public. Mr. John Russo was absent.

The meeting was called to order at 7:00 PM. Mr. Arluck led the Zoning Board in a moment of silence and in the pledge to the flag.

Approval of Minutes: A motion was made by Mr. Reid and seconded by Mrs. Wiand to approve the minutes of January 18, 2023. Vote: Mr. Russo – Aye, Ms. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye.

All Public Hearings remain open for one hour.

Public Hearing Continuations:

Garvilla Construction, Inc. - TM #99.1-4-29 (RS-2) 694 Decker Road – Pine Bush, NY 12566 – §177-6C – Variances for Lot Area of 3 Acres, Side Setback of 10.3’ Road Frontage of 20’:

Debra and Stephen DeEntremont – TM #98.1-1-9 (RS-1) 123 Clark Road, Pine Bush, NY 12566 - §177-23.2c.(2) and 117-10 – Variances for Lot Area of 5.448 Acres, Lot Width of 42.52’ and Rear Yard Setback of 53’:

Lily of the Valley Homes/Kelly Zemski – TM #99.2-6-22 (RAG-4) 2491 Bruynswick Road, Wallkill, NY 12589 – §177-6G Variances for Lot Area of .7 Acres and Lot Width of 65’:

Mr. Arluck re-opened the public hearings for Garvilla Construction, Debra and Stephen DeEntremont and Lily of the Valley Homes/Kelly Zemski to continue the public hearings to the March 15th meeting as all three applications are waiting for additional information.

A motion was made by Mrs. Wiand and seconded by Mr. Arluck that the public hearings for Garvilla Construction, Debra and Stephen DeEntremont and Lily of the Valley Homes/Kelly Zemski be continued to the March 15, 2023, meeting as they were still incomplete applications. Vote: Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye. Mr. Russo – Absent.

**Zoning Board of Appeals
February 15, 2023
Page 2 of 2**

Public Hearings:

Joseph Yuknevich – TM #107.3-2-14.200 (RAG-2) 2253 Route 300, Wallkill, NY 12589 – Appeal of Code Officials Determinations:

See attached transcript, which is made a part of these minutes with corrections on pages 22 and 59.

A motion was made by Mr. Arluck and seconded by Mrs. Wiand to determine this application a Type 2 SEQRA and is exempt from the SEQRA review. Vote: Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye. Mr. Russo – Absent.

A motion was made by Mr. Reid and seconded by Mrs. Wiand to close this Public Hearing. Vote: Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye. Mr. Russo – Absent.

Appearances: None

There was discussion on miscellaneous zoning matters.

A motion was made by Mr. Arluck and seconded by Mrs. Wiand to adjourn this meeting. Vote: Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye. Mr. Russo – Absent.

**Meeting Adjourned at 8:30 PM
Respectfully submitted,**

**Kathy Ebbrell
Zoning Board of Appeals Secretary**

1 ENFORCEMENT FOR THE TOWN OF SHAWANGUNK

2 JAMES BACON, ESQ.

3 KEVIN BLOOM, ESQ.

4 F. BRYAN PAZ, ESQ.

5 JASON GRASS

6 JOSEPH YUKNEVICH

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1 MR. BACON: Good evening, Mr.
2 Chairman and Members of the Board. My
3 name is James Bacon, attorney for Mr.
4 Yuknevich and what we thought that we'd
5 like to do tonight is to discuss the
6 facts and the law that is before the
7 court.

8 It's a very unusual situation
9 in which we are appealing criminal
10 charges from the local court to this
11 Board and we are permitted to do that by
12 Town Law §267-a (5), I believe. So, we
13 are going to go through the facts.

14 We have some photographs and
15 some different things to hand in as a
16 supplement to what I have already
17 submitted to the Board with the exhibits
18 from November, and also a letter that I
19 think was around January 31st.

20 As I said, these are unusual
21 circumstances. The Board has a specific
22 duty in this matter to look at whether or
23 not the facts support the charges that
24 were brought against Mr. Yuknevich by the
25 Building Inspector. So, we will be

1 looking into what those charges are.

2 There are four charges. One of
3 them has to do with a section of the
4 Code. He is charged with having the
5 garage closer to the street than his
6 residence. The other three charges have
7 to do with alleging that there is a home
8 occupation going on that is not complying
9 with the Code.

10 So, we do have a stenographer
11 here tonight. I think that after we are
12 completed, the public is allowed to speak
13 on this matter.

14 CHAIRMAN ARLUCK: Excuse me, I
15 was thinking that I'd like to hear from
16 the public beforehand.

17 MR. BACON: Beforehand - well,
18 that's fine with us. Whatever the Board
19 feels is the right way to go forward.

20 Just for the public's
21 information, this is the stenographer and
22 please try to speak clearly and try not
23 to interrupt anybody and please finish
24 with a sentence, like I just did, before
25 starting another sentence so she can make

1 sure that she gets them all down.

2 MR. HOYT: If I could, I'm
3 Richard Hoyt and I'm the attorney for the
4 Town. I just want to let everyone in the
5 room know that this is not a normal
6 variance matter. This Board generally
7 listens to requests for variances. That's
8 not tonight. This is an appeal.

9 The simple question for the
10 Board to determine after listening to all
11 the evidence is whether the Code Official
12 was correct, or not correct. This Board
13 has the power to fully affirm what he
14 did, partly affirm what he did, reverse
15 what he did, replace with what you think
16 -- so the Board has broad powers, but the
17 normal hardship tests are not relevant
18 here. That's not the issue. I just wanted
19 to make that clear.

20 CHAIRMAN ARLUCK: We have
21 circulated notices to all the property
22 owners surrounding this property that
23 lies in the Town of Newburgh. There is a
24 small piece of this property that lies in
25 the Town of Newburgh. Does anybody have

1 anything to say?

2 MR. BLOOM: Mr. Chairman, I'm
3 Kevin Bloom of Bloom & Bloom, P.C., on
4 behalf of Michael Labrada who is the
5 neighbor to Mr. Yuknevich.

6 May I approach?

7 CHAIRMAN ARLUCK: Yes.

8 MR. BLOOM: Mr. Chairman and
9 Members of the Board, again, my name is
10 Kevin Bloom and I represent Michael
11 Labrada. He is the nearer lot to the road
12 on Route 300 of this subdivision.

13 I'd like to set the table by
14 explaining exactly where the relative
15 properties are and then proceed from
16 there.

17 On this first exhibit here,
18 this is a survey plat that was done for
19 Mr. Yuknevich. It was done and last
20 revised in 2021. What you will see on the
21 right-hand side of the exhibit with this
22 particular direction that I have here on
23 my laser pointer - that's the property of
24 my client, Mr. Labrada. He lives there
25 with his wife and his children.

1 To the east of my client's
2 property is New York State 300, which is
3 represented here (Indicating). Mr.
4 Yuknevich's property is situated to the
5 left-hand side of the exhibit which is
6 exhibited here (Indicating).

7 In the green, for the Board's
8 reference, is the current set-back lines
9 for any structures that need to be built,
10 or should have been built on Mr.
11 Yuknevich's property.

12 In pink here (Indicating) is
13 Mr. Yuknevich's home and in red in
14 between the two lots is the offending
15 structure of the garage that was built
16 without a proper variance. This Board, in
17 2020 and in 2021 summarily rejected Mr.
18 Yuknevich's request for a variance for
19 that offending structure, that garage, if
20 you will, between the two properties.
21 Notably, he did not take an Article 78
22 proceeding on either of those findings of
23 the Board. In my opinion, that is what is
24 called estoppel. It is an estoppel. It is
25 a finding, a stare decisis already a

1 finding by this Board that has not been
2 challenged to the Supreme Court or
3 overturned in any Court Order. So, those
4 two findings of the Board - finding that
5 structure was done in violation of Code,
6 without a variance, still stands. What
7 Mr. Yuknevich is trying to do here
8 tonight, is he is trying to say, look it,
9 I want to go back and I want to revisit
10 those two decisions with the Board that
11 are already done. If you play golf,
12 that's a mulligan.

13 Unfortunately, there is no
14 current application here for another
15 variance. What he is attempting to say
16 for Count 1 is that this particular
17 driveway, which is really an accessway in
18 the Code, and I will get there in a
19 moment -

20 MR. BACON: Excuse me. Does he
21 have another one that the audience can
22 see so that we are able to follow along?

23 CHAIRMAN ARLUCK: Do you want
24 to set that up?

25 MR. BACON: Sure.

1 MR. HOYT: Mr. Bloom, my map is
2 updated June 22, 2022. Are we looking at
3 the same map?

4 MR. BLOOM: I don't have that
5 update, Mr. Hoyt, no. I think that the
6 plat and the actual locations have not
7 changed.

8 MR. HOYT: I believe that you
9 are correct on that. Thank you.

10 MR. BLOOM: You're welcome.

11 So again, the accessway, which
12 is really a driveway, which is situate
13 from Route 300 extends past my client's
14 lot up to Mr. Yuknevich's property. What
15 Mr. Yuknevich is trying to argue is that
16 the actual front portion of the home is
17 along the accessway. That's nonsense. It
18 was clear back when Mr. Yuknevich did any
19 work on the property. Why do I say that?
20 Because there was a specific section for
21 flag lots. It's 177-12(i)(1)(c). What
22 that pertains to, as you will see - that
23 section of the Code clearly delineates
24 that there are three flag lots which is a
25 subdivision, which there is. You measure

1 the street, which is represented here by
2 the accessway from the street to the back
3 flag lot and then importantly the front
4 yard side, back from the front which is
5 between the front lot and the rear flag
6 lot. What he is attempting to argue with
7 the Board is saying look it, it was
8 unclear back when I built it that the
9 accessway was really considered the
10 street. Therefore, the front yard should
11 be considered the accessway, meaning
12 along this driveway (Indicating). Well,
13 that's not what the Code says. The Code
14 says specifically that it's the street as
15 to where to measure the setback; not from
16 the accessway. What he is trying to do is
17 he is trying to conflate a driveway with
18 the street or an accessway, if you will,
19 with a street. You can't conflate the two
20 because the Code is clear as to where the
21 street ought to be.

22 If that isn't clear enough, in
23 Subsection C it indicates for purposes of
24 determining front yard setbacks, the
25 front yard shall be the yardline between

1 the flag lot's principal structure and
2 the front lot's rear property boundary,
3 as shown in sketch A below. So, what does
4 that mean? Here we have the house in the
5 front which is my client's property
6 (Indicating). You have the house in the
7 back, which is Mr. Yuknevich's property
8 and pursuant to the Code, it is very
9 clear that you are not supposed to have
10 anything between the two as long as you
11 do not offend the actual setback line.

12 This Board found on two
13 occasions back in 2020 and 2021 that he
14 had violated that setback and the reason
15 why he violated that setback is because
16 the way that you gage it and the way that
17 you measure it is clear from the Code -
18 is from the street.

19 MR. BACON: If I may be heard?

20 MR. BLOOM: If I may not be
21 interrupted?

22 CHAIRMAN ARLUCK: Let Mr. Bacon
23 finish.

24 MR. PAZ: This is Mr. Bacon
25 (Indicating). This is an appeal of

1 criminal charges that this lawyer is
2 representing Mr. Labrada in a civil
3 action. He is trying to make his case for
4 the civil action here in my client's
5 appeal and with Mr. Bacon, as his
6 criminal attorney, and I don't think that
7 it's appropriate, quite honestly.

8 MR. BLOOM: My client is a
9 neighbor. He has every right to have a
10 standing to say of whether or not the
11 criminal charges that were brought
12 against Mr. Yuknevich should be affirmed
13 by this Board, or not. Obviously, with
14 anyone who got notice -- if not more
15 notice than anyone else, he is the one
16 who has lived right next to the problem.

17 CHAIRMAN ARLUCK: You can
18 continue.

19 MR. BLOOM: When Mr. Yuknevich
20 tells to argue that he is allowed to
21 place the offending structure between the
22 two properties, he overlooks that the
23 Code is as clear as it was then, as it
24 was now - that there is to be no
25 offending structure between the two and

1 additionally, there is to be no offending
2 structure between his home and the
3 street. Meaning, the treed-wall of his
4 home is to be unobstructed between that
5 location and the streetline. He didn't do
6 that. He put the offending structure, the
7 garage, in between the two.

8 Now, I will move on to the
9 other portion of the charges which go
10 from 2 through 4. What they basically are
11 is they are basically alleging that Mr.
12 Yuknevich is operating a business out of
13 his premises, and he is.

14 Let's first start with the
15 letter that his counsel, Mr. Bacon, wrote
16 to the Board on November 15, 2020. I want
17 to call the Board's attention to Page 4.
18 It is the third paragraph from the
19 bottom. He is making the statement that
20 Mr. Yuknevich is a plumber. I want to
21 have the Board listen to that term again;
22 plumber. Because the evidence that this
23 Board is going to hear is far from what a
24 plumber does.

25 This is a photograph that was

1 taken by my client from the front of his
2 home in January of this year. What you
3 will see from that photograph - and I
4 call it a conga line, but they're trucks.
5 It's a conga line of trucks that are
6 proceeding from Mr. Yuknevich's property
7 out to State Route 300.

8 The foremost vehicle that is
9 turning onto Route 300 and making a left
10 - that is what is called a hydrovac
11 machine. For those of you who do not know
12 what a hydrovac machine is, a hydrovac
13 machine is a heavy commercial vehicle
14 that goes to various sites and uses a
15 procedure that shoots water to whatever
16 is being excavated in the ground. It
17 creates a mixture - kind of a muddy
18 slurry, if you will, and then extracts
19 that into the actual commercial vehicle
20 and then in Mr. Yuknevich's case where he
21 actually does this work on-site, he
22 brings it back to his property and he
23 dumps it, and we have the video to show
24 it to you. That is not the work of a
25 plumber. We have four commercial vehicles

1 coming out of the premises, including a
2 hydrovac machine. That is Mr. Yuknevich's
3 hydrovac machine that is operated by his
4 business; Hudson Valley Water and Sewer,
5 LLC, also known as Joe the Plumber.
6 That's not a plumber.

7 The next picture I'm going to
8 show you was been taken in July 2022.
9 This is a photograph of my client's
10 backyard pool and as you will see, there
11 is an excavator attached to a dump truck
12 that's now proceeding left to right back
13 into Mr. Yuknevich's property. Those,
14 again, are not tools of a plumber. Those
15 are tools of an excavation business,
16 which is exactly what Mr. Yuknevich runs,
17 and not a plumber.

18 The next photograph was taken
19 again in July of 2022. This shows again
20 the hydrovac machine that Mr. Yuknevich's
21 operates, again going back to his
22 residence.

23 The next photograph I'm going
24 to show you -- this is why, if not all
25 important, as to why my client has

1 standing as to what is going on here this
2 evening in affirming these charges. This
3 is a photograph that was also taken in
4 July of 2022 and this is now taken from
5 my client's driveway. This is my client's
6 daughter and she is proceeding, as you
7 can see, to ride her bike when a dump
8 truck of Mr. Yuknevich's is again,
9 entering into his property. It's not
10 safe. It's not what a residential
11 neighborhood should be like.

12 The next photograph goes to the
13 following: If what he is saying is true
14 as a plumber, he just operates off-site,
15 that's not true because he also gets
16 deliveries - commercial deliveries.

17 Here is a photograph that was
18 taken in May of 2022 and this is taken
19 again from my client's driveway/parking
20 lot and it is facing towards a delivery
21 truck that made a delivery, as you can
22 see, off the back to Mr. Yuknevich's
23 property. He operates a business there -
24 a commercial excavation business where he
25 does receive deliveries, not just merely

1 parking vehicles. If you're parking
2 vehicles, there would be no reason to
3 have deliveries. The reason why you have
4 deliveries is because you're running a
5 business there.

6 This is a photograph taken in
7 January 2023 of another delivery truck
8 from F.E. Webb that had just delivered
9 items to Mr. Yuknevich's property.

10 I want to address now Mr.
11 Yuknevich's attorney's argument in his
12 letter that, look it, the Town Code for
13 some reason allows for private garages to
14 house commercial vehicles, and operate.
15 That's nonsense. This is a Town
16 definition under the Code for a garage.
17 Aa garage, it indicates, is a building or
18 structure used for the storage of one or
19 more vehicles if maintained for the
20 resident occupants of the premises. I
21 don't even have to go further in the
22 sentence. Those commercial vehicles are
23 not being used for the occupants of the
24 premises. Mr. Yuknevich owns the property
25 individually; not his business.