

**WILTON ZONING BOARD OF APPEALS
THURSDAY, June 28, 2018**

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, June 28, 2018 at the Wilton Town Hall, 22 Traver Road, Wilton, New York and was called to order by Chairman O'Brien at 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman O'Brien, Gerard Zabala, Scott Kingsley, and Charles Foehser. Also present were Mark Schachner, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Christopher Ramsdill, Dean Kolligian, Robert Barrett, and James Deloria.

MINUTES: The minutes of the last meeting, held on May 24, 2018 were approved, as submitted, on a motion made by Mr. Foehser seconded by Mr. Kingsley. All board members were in favor.

CORRESPONDENCE: None other than those relating to current applications before the board.

OLD BUSINESS:

Correct and Amend Notice of Decision for Appeal No. 88-10 Wayne Peterson, 2 Meditation Way, Saratoga Springs, New York 12866 for a Variance to the Zoning Ordinance, Section 407, for a professional office on property located at 4285 Route 50, Saratoga Springs, New York 12866, zoned R-2, in the Town of Wilton.

Chairman O'Brien asked Mr. Mykins to explain this correction and amendment to Appeal No. 88-10. Mr. Mykins stated, "This is an administrative correction to the Notice of Decision. In 1988, Wayne Peterson went before the Board for a Use Variance and it shows in the application that it was a Use Variance, both the application to the ZBA and the application to the Saratoga County Planning Board identify it as a Use Variance. The property was zoned R-2 at the time and at that time business offices weren't allowed in the R-2, neither as a permitted use or a specially permitted use. Both applications reference section 407 which is basically the allowed uses for that zone at that time. That section also refers you to 401 and 408. All this documentation is in the packet that we gave the Board. The ZBA actually voted unanimously, all members were in favor. It also received a favorable recommendation from the Town of Wilton Planning Board to the

Wilton Zoning Board of Appeals
Regular Meeting June 28, 2018

ZBA. It was actually a Use Variance that was granted. When it went on the Notice of Decision, it was written as a Special Permit.”

Chairman O’Brien said that a motion is needed to amend the Special Permit to a Use Variance. Attorney Schachner indicated, “That you are actually amending the Notice of Decision because the Decision was written wrong but the minutes reflect the right Decision but the Notice of Decision does not. So that would be a motion to amend the Notice of Decision to properly reflect the Use Variance that was granted not a Special Use Permit.”

Mr. Kingsley made a motion to amend the Notice of Decision of March 25, 1988, in relation to Appeal No. 88-10 for property located on Route 50, Wilton, New York, zoned R-2, noting that it was a Use Variance that was granted by the Board not a Special Permit as notated in the Notice of Decision. The Use Variance is reflects in the minutes of the meeting, on the original application to the Zoning Board of Appeals, and the Saratoga County Planning Board.

Mr. Zabala seconded the motion. Mr. Kingsley, Mr. Zabala, Mr. Foehser, and Chairman O’Brien were all in favor. The motion passed.

RENEWALS:

APPEAL NO. 90-18 Vicki Bachmann, 4 Newington Avenue, Gansevoort, New York 12831. Request for the renewal of a Special Permit, pursuant to Section 129-21 (A) of the Zoning Ordinance for a home occupation as a law office; property located on 4 Newington Avenue, Tax Map No. 140.6-2-9, zoned R-1 in the Town of Wilton. Special Permit originally granted on June 28, 1990 is due for review and renewal.

Ms. Bachmann stated that she would like to renew her Special Permit as she is still representing children in Saratoga County. She would like to continue until she decides that she no longer wants to do this.

A resident said that he had a procedural question. Chairman O’Brien asked the resident to identify himself.

Eric Rosenberg, 16 Craw Lane, said, “Just procedurally, I would like to understand: what are the requirements for these various renewals? And, what is done to make sure – I assume that part of the requirements is that if people are still adhering to whatever conditions there are for Special Permits. And, what is being done at this time when there is a renewal, to make sure, they are, people are still in compliance?”

Mr. Mykins said, “If they weren’t in compliance, if we were receiving complaints and they weren’t in compliance, I would let the Board know that they weren’t in compliance.”

Wilton Zoning Board of Appeals
Regular Meeting June 28, 2018

Attorney Schachner said, "It didn't get this far but the Board always asks Mr. Mykins before it renews any such permit. Whether the applicant is in compliance or whether there have been any complaints about the operation, 100% of the time the Board asks the Zoning Officer/Building Inspector that question."

Mr. Rosenberg said, "Mr. Mykins, if I may, do you then go and actually inspect the property to make sure they are in compliance?"

Mr. Mykins said, "We inspect properties, and we go by them all the time and if there are issues, we let them know."

Mr. Roseberg said, "But upon a renewal application, do you then specifically go and check that specific property based on the application for renewal."

Mr. Mykins answered, "If necessary, but not always. No."

Chairman O'Brien stated, "The Board always asks Mr. Mykins if there have been questions or concerns relating to the property involved. Any further discussion."

Mr. Zabala said, "Mark, I am not aware of anything. Does anyone else on the Board know of anything that is not in compliance?"

Mr. Mykins said, "No. Not at all."

Mr. Zabala made a motion to approve Appeal No. 90-18 for the request for a Special Permit renewal for Vicki Bachmann, 4 Newington Avenue, Gansevoort, New York 12831. Request for the renewal of a Special Permit, pursuant to Section 129-21 (A) of the Zoning Ordinance for a home occupation as a law office; property located on 4 Newington Avenue, Tax Map No. 140.6-2-9, zoned R-1, in the Town of Wilton. The Special Permit was originally granted on June 28, 1990 and conditioned for renewal for another two years.

Mr. Foehser seconded the motion. Mr. Zabala, Mr. Kingsley, Mr. Foehser, and Chairman O'Brien were in favor. The motion passed.

APPEAL NO. 12-22 Mario Maresca, 124 Edie Road, Saratoga Springs, New York 12866. Request for the renewal of a Special Permit, pursuant to Section 129-176 (V) of the Zoning Ordinance for the keeping of chickens; property located at 124 Edie Road, Tax Map No. 141.-2-82, zoned R-2, in the Town of Wilton. Special Permit originally granted on May 24, 2012 for a period of two years, is due for review and renewal.

Chairman O'Brien read the correspondence from the applicant Mario Maresca which requested a termination of the current Special Permit for the keeping of chickens.

APPEAL NO. 12-27 Jody Cracco, 7 Greenwood Road, Lake George, New York 12845. Request for the renewal of a Special Permit pursuant to Schedule N and Section 129-176 T 1,2,3,4 and 5 of the Zoning Ordinance for a Day Use Dog Kennel;

Wilton Zoning Board of Appeals
Regular Meeting June 28, 2018

property located at 474 Route 9, Tax Map No. 153.13-1-4.2, zoned CR-1, in the Town of Wilton. Special Permit originally granted on June 28, 2012 for a period of two years, is due for review and renewal.

Ms. Cracco stated that she would like to renew her Special Permit for a Day Use Dog Kennel. Chairman O'Brien asked Mr. Mykins if there have been any complainants or issues with this property. Mr. Mykins said there haven't been any concerns with this Special Permit and he has just been out there. Chairman O'Brien asked if there were any questions from the Board.

Mr. Foehser made a motion to approve Appeal No. 12-27 for the request for a Special Permit renewal for Jody Cracco, 7 Greenwood Road, Lake George, New York 12845. Request for the renewal of a Special Permit pursuant to Schedule N and Section 129-176 T 1,2,3,4 and 5 of the Zoning Ordinance for a Day Use Dog Kennel; property located at 474 Route 9, Tax Map No. 153.13-1-4.2, zoned CR-1, in the Town of Wilton. Special Permit originally granted on June 28, 2012 and conditioned for renewal for another two years. Mr. Kingsley seconded the motion. Mr. Zabala, Mr. Kingsley, Mr. Foehser and Chairman O'Brien were in favor. The motion passed.

NEW BUSINESS:

APPEAL NO. 2018-10 Michael Trimarchi, 8 Harvest Lane, Wilton, New York 12831. Request for Area Variances pursuant to Section 129-157 A. of the Zoning Ordinance for the placement of a pool house; property located on 8 Harvest Lane, Wilton, New York 12831, Tax Map No. 140.12-1-13, zoned R-1, in the Town of Wilton.

Mr. Trimarchi said that he would like to put up a pool house. Mr. Zabala asked the applicant if the surrounding neighbors had any problems with this project. Mr. Trimarchi said that he hasn't heard any complaints. He said that Jeff Reale is one of the neighbors who is fine with this project and the neighbor on the other side was also fine with this construction. He hasn't heard anything from the neighbor in the back. He said that he had trees taken down recently.

Mr. Foehser asked if the trees that are on the property now are staying on the property. Mr. Trimarchi said that was correct. He was taking down trees prior to let the sun shine on the pool. He said that there are still trees remaining between the properties on the neighbors sides.

Mr. Zabala asked Mr. Mykins if he could elaborate on the indicated drainage easement indicated on the map. Mr. Mykins said, "The drainage easement runs between the properties – front and back, the backside of that property and the property on Cobble Hill. Basically, the drainage from the yards run into that and then run out into a catch basin further on down the line."

Wilton Zoning Board of Appeals
Regular Meeting June 28, 2018

Mr. Zabala said, "So, this won't impact that, in other words, you can't build on this. This will still remain and be utilized for its intended purpose."

Mr. Mykins said, "Yes. It will not be impacted at all."

Chairman O'Brien opened the public hearing at 7:13pm.

Resident Eric Rosenberg, 16 Craw Lane, said, "I'm just curious because it doesn't say on here [on the agenda] why the variance is needed."

Chairman O'Brien said, "Because he needs relief – property related."

Mr. Rosenberg said, "I understand that."

Attorney Schachner addressed Chairman O'Brien, "Can I ask a question?"

Chairman O'Brien said, "Yes."

Attorney Schachner asked Mr. Rosenberg, "When you said, 'it doesn't say in here', what is the 'in here' you are referring to?"

Mr. Rosenberg said, "If I am looking at the information that I have which is the agenda. Other Boards put materials related to the issues in the back so that people can use them. This Board does not. So in advance I have no way of knowing as an interested resident why this particular applicant needs a variance and I would like to know that there are conditions on whatever it is as to size and whatever and where it is placed. So as a concerned citizen, I would like to know the reason that he needs the variance."

Attorney Schachner said, "Alright, so that statement that the gentleman makes that he has no way of knowing before the meeting what type of variance or how much variance is needed, is clearly not correct because he can make a request to review any application materials that he wants and then he can find that information out anytime. It is absolutely correct that it is not stated in the agenda; that is absolutely correct."

Mr. Rosenberg said, "May I ask, what the need is for."

Chairman O'Brien stated, "We don't usually grant variances unless they are needed. So therefore, the variance is needed because he doesn't have enough property; he needs relief to place the pool house where he wants to place it. The only place he can place it is where it will be compatible for the Board and for him to put it. He can't just put it any place. We look at the application and see where he wants it to be and where the Board thinks it should be."

Mr. Rosenberg asked, "Does the application include a plan for the building at all? Or is it at this point just a request for the relief?"

Wilton Zoning Board of Appeals
Regular Meeting June 28, 2018

Chairman O'Brien said, "He has the size of the building."

Mr. Mykins said, "It shows the survey with the placement of the building."

Mr. Rosenberg asked, "What is the size of the building?"

Mr. Trimarchi said, "The footprint is 21' x 34'."

Mr. Rosenberg said, "So in the code, it provides for an accessory building, but I believe, can only 170 square feet."

Mr. Mykins said, "It allows up to 170 square feet to be placed within five feet from the rear and side property line. Anything beyond 170 square feet, placed that close to the property line requires relief."

Mr. Rosenberg asked, "Is that why he is asking for relief?"

Mr. Mykins said, "That is why he is asking for relief. That is why he submitted an application."

Mr. Rosenberg asked, "He doesn't need a variance to exceed the size the building that is defined in the code?"

Mr. Mykins said, "We don't have a size. If you read that portion of the code, it says that any accessory structure up to 170 square feet in size can be placed within five feet of the side and rear property lines. It doesn't state that he can't build a bigger building and put it within the building envelope. Within the envelope provided the Zoning requirements require the setbacks."

Mr. Rosenberg asked, "So there is nothing in the Zoning Code that restricts the size of this accessory building, other than what you are saying?"

Mr. Mykins said, "Not in our Zoning Code."

Chairman O'Brien closed the public hearing at 7:17pm.

Mr. Zabala made a motion on Appeal No. 2018-10 for Michael Trimarchi, 8 Harvest Lane, Wilton, New York 12831. Request for Area Variances pursuant to Secion 129-157 A. of the Zoning Ordinance for the placement of a poolhouse; property located on 8 Harvest Lane, Wilton, New York 12831, Tax Map No. 140.12-1-13, zoned R-1, in the Town of Wilton be granted in the relief amount of 45.0 feet from rear property line, relief of 5.0 feet from side property line, and relief of 5.0 feet from easement, because the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community, for the following reasons:

1. The applicant has demonstrated that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not

Wilton Zoning Board of Appeals
Regular Meeting June 28, 2018

be created by the granting of the Area Variances because the structure will be designed to stay within the twelve foot maximum height requirement maintaining light and line of sight while also matching the high quality of surrounding homes and increasing the value of the home. Also, surrounding homes have pools and pool houses in place.

2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by Area Variance because the easement at the back of the property as well as the placement of the home, the pool, the shed and the swing set within the residence.

3. The applicant has demonstrated that the requested Area Variances are not substantial because there will be no impact to neighboring properties value, usability or enjoyment from the allowing the requested variance.

4. The applicant has demonstrated that the requested Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because the trees in the planned location for the structure are being removed to allow sunlight to the pool. The trees blocking the neighbors' property will remain.

5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Foeshler seconded the motion. Mr. Zabala, Mr. Foehser, Mr. Kingsley, and Chairman O'Brien were in favor. The motion passed.

ADJOURNMENT:

Mr. Kingsley made a motion to adjourn the meeting at 7:21pm. Mr. Zabala seconded the motion. All were in favor. The motion passed.

Dated: _____

BOARD OF APPEALS

BY _____

Lisa Muller, Zoning Clerk

BY _____

Wilton Zoning Board of Appeals
Regular Meeting June 28, 2018
Joseph O'Brien, Chairman