TOWN OF WILTON
22 Traver Road
Gansevoort, New York 12831-9127

(518) 587-1939, Ext. 224
FAX (518) 587-2837
www.townofwilton.com

JOSEPH O'BRIEN
Zoning Board Chairman

LISA MULLER
Zoning Clerk

MARK MYKINS
Zoning Officer

WILTON ZONING BOARD OF APPEALS
THURSDAY, July 26, 2018

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, July 26, 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: Christopher Ramsdill, Dean Kolligian, Robert Barrett, James Deloria, Gerard Zabala, and Scott Kingsley. Also present were Mark Schachner, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Chairman O'Brien and Charles Foehser.

MINUTES: The minutes of the last meeting, held on June 28, 2018 were approved, as submitted, on a motion made by Mr. Zabala seconded by Mr. Barrett. All board members were in favor.

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

RENEWALS:

APPEAL NO. 99-16 Richard and Kay Zwirn, 9 Taylor Road, Gansevoort, New York 12831. Request for the renewal of a Special Permit, pursuant to Schedule B of the Zoning Ordinance, for a private stable; property located on Route 50 and Duncan Road, Tax Map Nos. 129.-1-70.11 and 129.-1-70.12, zoned R-2 in the Town of Wilton. Special Permit originally granted on July 22, 1999 for a period of two years, is due for review and renewal.

Mr. Zwirn stated that he would like to renew his Special Permit. Vice Chairman Ramsdill asked Mr. Mykins if there have been any issues currently with this property and the private stable. Mr. Mykins said there have been no current complaints or known violations

regarding this property or the keeping of the horses. Mr. Ramsdill asked if anyone had any questions.

Mr. Eric Rosenberg, 16 Craw Lane, stated, "I have just a procedural question. Is your name Zwirn?"
Mr. Zwirn said, "That was correct."
Mr. Rosenberg said, "I just looked up and the Zwirns no longer, at least according to online, they no longer own the property that the permit was granted on originally. So my question is - can you give a renewal to the new property owners based on the prior owner of the property?"
Mr. Mykins said, "I have no idea what he is talking about. They are at the same address."
Mr. Rosenberg said, "Well, I looked online to the Tax Assessor's thing."
Mr. Kolligian asked, "Mr. Zwirn, do you still own the property."
Mr. Zwirn said, "So we had nine acres and a couple of months ago, we gave land to my daughter and my son-in-law to build a house, on the back. Not where the horses have ever been."
Mr. Ramsdill said, "So the property that has received this initial permit is still something that you own, and you are requesting to renew?"
Mr. Zwirn said that was correct.
Mr. Rosenberg interjected, "Not according to - the tax records say otherwise."
Mr. Deloria said, "So the tax parcel i.d.s that are on here, there are two that are listed on the appeal – do you still own both of those tax parcels?"
Mr. Zwirn said, "I believe we owned three tax parcels and now we own two."
Mr. Kolligian said, "So tax map numbers 129.-1-70.11 and 129.-1-70.12, Mark can we confirm that those are the parcels of land that always had the Special Permit on those, which is the same request that the individual is requesting today?"
Mr. Mykins said, "I can't confirm that. I can check into it."
Mr. Rosenberg said, "Just to let you know, I printed off the computer. So I would be happy to show you guys."
Mr. Kingsley asked, "Is the Special Permit like a Variance, does it run with the property and not the applicant?"
Mr. Schachner said, "Generally, yes, although the way our (Wilton) Special Permit regulations are written, I think the Board has previously taken the position that it is specific to the property owner. I'm pretty sure that has occurred in the past."
Mr. Deloria said, "So then your address is still the same?"
Mr. Zwirn said, "Yes. If and when, my daughter and son-in-law, don't even own the property the horses are on, would be fine. Whatever is needed."
Mr. Ramsdill asked, "Mr. Rosenberg, do you have the original approval, a copy of that?"
Mr. Rosenberg said, "Yeah, I have all the documents. Again, procedurally, I don't know, can you give a renewal to someone who doesn't own the property?"
Mr. Ramsdill said, "Let's just check and see what the tax map numbers were on the original approval and if we have to clarify this."
Mr. Kolligian asked, "Do you have the original approval?"

Mr. Ramsdill looked at the original approval document, Notice of Decision, and said, "The original from 1999, we can have the record reflect that it did include the tax map numbers, in the initial request for 129.-1-70.11 and 129.-1-70.12, zoned R-2 in the Town of Wilton. These are consistent with what the applicant has on the renewal currently and if we proceed with this, we are renewing the appropriate tax map numbers and the same property."
Mr. Rosenberg stated, "Those tax map numbers are not owned by Mr. Zwirn any longer."
Mrs. Muller, ZBA Secretary, said, "We can't confirm that except through the Assessor's Office, right?"
Mr. Mykins said, "I would have to go back and look this up."
Mr. Schachner stated, "The applicant seems to be indicating that, first of all I think the applicant is indicating that he does still own those tax map parcels. Correct?"
Mr. Zwirn said, "I don't have the map, but we owned three and now we own two but the parcels the horses have always been on. I can't say for sure what parcels they were."
Mr. Mykins said, "I can look at the tax map parcels. If you want to table this for one month, I can look into this and see if we need to amend the numbers on tax map parcel. The Zwirns still own the property that the horses are on."
Mr. Kolligian said, "Can you give him a conditional permit based on verification?"
Mr. Schachner said, "I was going to suggest exactly that. You can also condition it on verification of the confirmation of the tax map i.d.s. You can also, if you wish – I never tell the Board what to do, you can also include as a condition that Mr. Zwirn executed a document authorizing the Special Permit to be in the name of his daughter, if she in fact owns the property."
Mr. Rosenberg asked, "Can you assign your permit to someone else?"
Mr. Schachner said, "I'm not really here to answer Mr. Rosenberg's questions, if that is okay with the Board."
Board members agreed.
Mr. Rosenberg said, "Well, I'm assuming the Board wants to follow the law."
Mr. Kingsley said, "Yes, we would like to do that as well."
Mr. Rosenberg said, "Well, I'm just saying, the question is: does the law? That's my only question."
Mr. Mykins said, "If we condition this on confirmation of the tax map parcels, if the tax map parcel is a different number now, because they do change with subdivisions, we can amend that, I believe."
Mr. Schachner said, "Right. Let's remember that tax maps are not the Bible of real property ownership, they are actually notoriously inaccurate. So, you really want to make sure it is the right property and one superficial way to do that is by tax map number, but we can also review deeds and the like to make sure."
Mr. Ramsdill said, "We can condition this on Mark's review to make a determination…"
Mr. Schachner injects, "Confirmation."
Mr. Ramsdill said, "Confirmation and if that is not correct we would have to revisit this with an amendment."
Mr. Schachner said, "Correct."
Mr. Rosenberg states, "I just have two more quick questions, if I may. In connection with this appeal, what specific steps were taken to verify that the property is currently in

compliance with all the requirements of the permit being renewed? And, what official document was generated to support a conclusion that the property is currently in compliance with all the requirements of the permit being renewed?"
Mr. Ramsdill said, "This is not an issue we are going to address tonight concerning those requests. So, we are going to move forward."
Mr. Rosenberg said, "Okay. I just wanted those questions on the record."
Mr. Ramsdill said, "We are going to move forward to make an appropriate motion to direct this to Mark to having the confirmation of the tax map numbers and then we would after that be able to let you know [Mr. Zwirn] if we would need you to come back next month to make sure that we are amending it to be appropriate with your property."
Mr. Schachner said, "I am going to suggest that we ask our Building Inspector/Zoning Officer to confirm that it is the same property. Let's not rely on tax map numbers. Like Mark said, tax map numbers sometimes change on the exact same property as a result of a subdivision, as a result of a renumbering system, as a result of who knows what. Corrections, deeds, all kinds of things happen to change these tax map numbers. So my suggestion is that the condition not be worded as confirmation it is the same tax map number but it is the same property."
Mr. Ramsdill said, "Understood."
Mr. Deloria said, "Well, especially, if it has been our practice to grant the permit to the individual address and it is his address."
Mr. Rosenberg interjected, "I think you said the individual, not the property."
Mr. Ramsdill said, "We are not entertaining any more public comment on this. So then if people feel comfortable making a motion…"
Mr. Kolligian asked, "Was there something more you wanted to say, Mr. Zwirn?"
Mr. Zwirn said, "We have been doing this for 21 or 22 years and I plan on doing it for a whole lot more. We try to do what is right for Wilton."
Mr. Deloria asked, "Have you ever had any problems with your neighbors?"
Mr. Mykins said, "Back in 2006, I think we had a little bit of a problem with the manure. That was resolved. There have not been any other issues."
Mr. Ramsdill said, "Does anyone care to make a motion?"

Mr. Kolligian made a motion to approve Appeal Number 99-16 the request for a Special Permit for Richard and Kay Zwirn, 9 Taylor Road, Gansevoort, New York 12831. Request for a Special Permit, pursuant to Schedule B of the Zoning Ordinance, for a private stable; property located on Route 50 and Duncan Road, currently the Tax Map Nos. recorded 129.-1-70.11 and 129.-1-70.12, zoned R-2 in the Town of Wilton. Special Permit originally granted for these same Tax Map parcel numbers on July 22, 1999 for a period of two years. This is conditioned upon verification of confirmation of the deed and actual property ownership and should we need to amend this Special Permit to reflect the appropriate tax map numbers since that is what we typically record them as. This permit is being approved for an additional two years. Mr. Zabala seconded the motion. All were in favor. The motion passed.

NEW BUSINESS:

APPEAL NO. 2018-11 Roger Goldsmith, 16 Bullard Lane, Saratoga Springs, New York 12866. Request for Area Variances, pursuant to Section 129-157 and Schedule "E" RB-1 and Schedule "B" R-2 of the Zoning Ordinance; property located on 16 Bullard Lane, Saratoga Springs, New York 12866, Tax Map No. 141.-2-12, zoned R-2 in the Town of Wilton.

Mr. Ramsdill recused himself from this appeal.

Mr. Roger Goldsmith said that he was representing Urszula Janiki, the property owner. Mr. Goldsmith said, "Basically what we are doing is requesting an assortment of variances, some of them are setbacks for existing buildings up along Bullard Lane and also for frontage on Route 50 for a subdivision piece of property which is required to be 200 feet and there is only 159 feet along Route 50. Those are the variances that we are requesting."
Mr. Kolligian said, "So the variances are for frontage, right?"
Mr. Goldsmith said, "No. Do you have the Determination?"
Mr. Kolligian said, "Yes. So, we have the request for relief on the frontage, lot 2 for the garage structure and the property line from the side and the front, and the residence on lot 2, which a request for relief on the front setback."
Mr. Mykins said, "Just to clarify and let the Board know, the variances on the existing structures, the only reason we do that in conjunction with something like this is to clean up the property for bank purposes. The banks have a tendency to like to see that as a variance versus being grandfathered. So, the critical variance is the 150 feet frontage. So, in other words, he didn't have to do the other one."
Mr. Deloria said, "So if he wasn't coming in for the one variance, he wouldn't be applying for the other ones, they would just remain grandfathered."
Mr. Schachner said, "As a pre-existing, non-conforming."
Mr. Kolligian said, "So the real focus, Mark, just to make sure that I understood that, is the parcel that borders Route 50."
Mr. Mykins said, "Correct."
Mr. Deloria said, "I did notice in your plan sheets, it says there are four sheets and we only have two here."
Mr. Mykins said, "They were so big that we only gave you the two affected parcels rather than give you all four. There is nothing on the other parcels."
Mr. Zabala asked, "Mr. Mykins, there are structures on adjoining property, they have been there pre-existing for a long period of time. Is that correct?"
Mr. Mykins said, "Yes, since the 1800's."
Mr. Kingsley said, "Definitely a unique piece of property."
Mr. Kolligian asked if there were any other questions from the Board.
Mr. Zabala asked, "Have there been any new structures added since zoning has been enacted within the town?"
Mr. Goldsmith said, "As far as I know, no."
Mr. Zabala stated, "They are pre-existing structures prior to the adoption of zoning. Thank you."

Mr. Kolligian asked if there were any other questions from the Board.
Mr. Zabala asked, "Have any other surrounding neighbors had issues or response to this proposal?"
Mr. Mykins said, "Not at this point, no."
Mr. Kolligian said, "Do we have the cards back?"
Mr. Muller said, "All but one."
Mr. Kolligian opened the public hearing.
Mr. Charles Gerber, 40 Bullard Lane, stated, "I own property at 4281 Route 50. My comment isn't to oppose anything, it is more to question the action that you are taking. I haven't been privy to see any of the maps or anything. I did get a notice that there was a public hearing tonight which is why I showed up just to find out what was going on. So, the action is just to subdivide, if I am understanding correctly, the Route 50 portion that lies between the tracks and Route 50 separating it from the rest of the parcel is all one tax map parcel. I have no problem with that, the variance that you grant for the portion on Route 50 though as long as you are not taking an action that is allowing anything specific on that site right now. I have heard rumors, I have not seen any specific plans that will happen with that parcel but because you issue a variance to make that a lot, is it going to allow for some special use or some special development on that portion?"
Mr. Mykins said, "Not anything special. It makes it compliant with zoning for development."
Mr. Kingsley said, "It would have to comply with the RB-1 zone."
Mr. Gerber said, "The only reason I say that is because what you are doing as a Board, it is a self-imposed hardship that is being put on that parcel. It is not pre-existing. You are making a lot that does not conform with zoning."
Mr. Mykins said, "It can't be subdivided unless it meets zoning. The only way to allow it to meet zoning is to bring it in front of the Board for a variance. The variance allows us to grant it."
Mr. Gerber said, "Then whatever goes on that property has to meet the RB-1 zoning."
Mr. Schachner said, "Anything new."
Mr. Barrett said, "I might add, it is quite common that we find things like this because the town is very old and there are a lot of lots that don't match."
Mr. Gerber said, "We had the exact same issue at 4281 when I bought that property."
Mr. Barrett said, "It is a very common thing."
Mr. Gerber said, "The Board gave me the variances so that it would be compliant for the banks."
Mr. Kolligian said, "The key really is on the property descriptions for the banks. That is what it really comes down to. To make sure that when ownership transfers that the same ownership that was originally given and is transferred to the new owners with the exact same property description. Banks prefer it that way."
Mr. Gerber asked, "So there would be another public hearing prior to the development of that Route 50 property."
Mr. Kolligian said, "It would have to go to planning first for a new application."

Mr. Gerber said, “So there would be ample time to comment. Again, next door, I have a residential use, I’m thinking that will be commercial use. We just want to make sure that we aren’t upsetting the residential character of the neighborhood.”
Mr. Kingsley said, “Anything that would go in there that would meet the RB-1 requirements that wouldn’t need a variance would just have to go on for site plan.”
Mr. Mykins said, “Yes, with the exception of one and two-family dwellings. That is the only thing that can go in there without site plan."
Mr. Schachner said, “That would not require a public hearing.”
Mr. Kolligian asked if there were any other questions or comments.

Mr. Zabala made a motion to approve appeal number 2018-11 for Roger Goldsmith, 16 Bullard Lane, Saratoga Springs, New York 12866. Request for area variances, pursuant to Section 129-157 and Schedule “E” RB-1 and Schedule “B” R-2 of the Zoning Ordinance; property located on 16 Bullard Lane, Saratoga Springs, New York 12866, Tax Map No. 141.-2-12, zoned R-2 in the Town of Wilton, granted approval for a 158.69 feet frontage on Lot 1,
a 13.30 feet front property line and 20.60 feet side property line for garage structure on lot 2 and 35.20 feet front property line for residence on lot 2; property located 16 Bullard Lane, Saratoga Springs, New York 12866, Tax Map No. 141.-2-12, zoned R-2, in the Town of Wilton, was granted 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 be created by the granting of the Area Variances because the current home has existed for many years, over a century, and the subdivided parcel will be in an RB-1 zone.

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 it is required to subdivide this property.

3. The applicant has demonstrated that the requested Area Variances are not substantial because similar conditions exist on neighboring properties.

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 there will be no major physical changes to the property.

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

Mr. Barrett seconded the motion. Mr. Zabala, Mr. Barrett, Mr. Deloria, Mr. Kolligian, and Mr. Kingsley, were in favor. The motion passed.

ADJOURNMENT:

Mr. Kingsley made a motion to adjourn the meeting at 7:25pm. Mr. Zabala seconded the motion All were in favor. The motion passed.

Dated: <u>August 23, 2018</u>

BOARD OF APPEALS

BY_____

Lisa Muller, Zoning Clerk

BY_____

Joseph O'Brien, Chairman