

**ZONING BOARD OF APPEALS
TOWN OF MARBLETOWN
ULSTER COUNTY
COTTEKILL, NEW YORK
(845) 687-7500 Ext. 171**

MINUTES OF May 7th, 2019 **Special Meeting** of the Town of Marbletown **Zoning Board of Appeals**, held at the **Rondout Municipal Center**, Cottekill, NY.

Chairman Perry called the meeting to order at 7:00PM.

PRESENT:

Paris Perry, Chairman
Will Husta
Andrew Nilsen

ABSENT:

Tom Smiley, Vice Chairman
Kathleen Grambling
Kevin Fredricks

Also present:

Shaye Davis, Secretary.

2019-02 Area Variance – Public Hearing

Mazdack Rassi - Owner

Conklin Architecture – Architect

Proposes constructing a swimming pool and pool house in their front yard.

Located at 17 Vly Road, Accord. Zoning District: A-3. SBL: 54.4-1-8.211

Kevin Conklin from Conklin Architecture was present on behalf of the application.

Mr. Conklin updated the Board to where the well was shown on the plot plan.

Mr. Perry stated that the septic did not have to be looked at, and that he had misspoke.

Mr. Conklin stated that they plan on checking into the septic anyway just to make sure.

Mr. Nilsen motioned to close the public hearing. Mr. Husta seconded the motion.

All in favor. Motioned Carried.

3 ayes, 0 nays, 0 abstain, 3 absent

The Board had no further discussion.

Findings of the Zoning Board of Appeals with review of the application:

1.) "Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance."

Finding: The laws on front yard restrictions were designed to create consistent front yard appearances. The requirement for accessory uses and structures to be placed outside the front yard as defined in the Zoning Law (Section 200-34) is less relevant to the character of the neighborhood where this property is located. The house was placed at the far end of this 34.5-acre property, and as such the front yard consists of the bulk of the acreage. The house is set back 650' from the road, on a hill. The proposed site for the pool is located at the former site of a horse corral and is shielded from the road view by many trees which create a visual barrier. Furthermore, none of the neighbors has expressed any concern about this proposed Variance request.

Conclusion: The purpose of the Zoning requirement prohibiting Accessory structures from placement in front yards is to keep a traditional look of houses as you drive by. However, the layout of this lot and the location of the existing house being setback so far from the road is not a traditional design that would benefit from traditional front yard accessory restrictions. Allowing the construction of 20' x 40' pool and a new 700 square foot pool house in the front yard will not create an undesirable change in the character of the neighborhood nor a detriment to nearby properties. To ensure that further screening is not needed the ZBA will conduct a site visit prior to the issuance of a C/O to determine if further screening between the pool/pool house and Vly Atwood Road is needed.

2.) "Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance."

Finding: The placement of the house at the far end of this 34.5-acre lot does not allow for additional structures in the side or rear yards.

Conclusion: The Board finds based on evidence submitted to it, requiring the Accessory structures to be placed outside of the front yard would create an unreasonable hardship which an area variance can reasonably mitigate.

3.) "Whether the requested area variance is substantial"

Finding: Yes, the request is substantial. However, the parameters of the property and the location of the house leave no alternative placements but in the front yard. These proposed structures exceed the 65 feet from the center of Vly Atwood Road setback requirement. The

request is mitigated by both the existing vegetation which creates a visual barrier and the long distance to the Vly Atwood Road.

Conclusion: *In order to render this request less substantial, The Variance will be applicable to this pool and pool house only and no further structures will be allowed between the principal residence and Vly Atwood Road without another Variance from the Zoning Board of Appeals.*

4.) “Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.”

Finding: *requiring the Applicants to comply with placing the accessory structures wholly outside the front yard as defined in the zoning law would not be possible. Not granting the variance would force the owner to clear wooded area behind his house.*

Conclusion: *Based on the above Findings, the Board concludes there will be no adverse effect nor impact on the physical or environmental conditions in the neighborhood or district by granting the variance for the physical location of the proposed pool and pool house structures to be located in the front yard as defined in the zoning law, rather it would help prevent adverse impacts on the environment.*

5.) “Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board but shall not necessarily preclude the granting of the area variance”

Finding: *The difficulty for which the Applicants sought variance relief is self-created in that they wish to have a pool and pool house.*

Conclusion: *The Applicants’ hardship was self-created. The Town code allows accessory pools and structures as a common use and right. It is imperative that an Applicant do everything feasible to comply with zoning. Yet, the ability to grant an area Variance is at times the most feasible, logical option as long as the health, safety, and welfare of the Town and its residents are balanced. The Zoning Law requiring construction outside of the front yard can be balanced with all other factors. With all the relevant findings and factors discussed herein, the request, while self-created, on balance has merit. Any self-created hardship does not weigh significantly against the overall policy to allow the accessory structures to be granted a physical variance to be located in the front yard as defined in section 200-13 of the Town of Marbletown Zoning law.*

The Board when granting an area variance, shall grant the minimum variance that it shall deem necessary and adequate to alleviate the difficulty shown by the applicant and that also will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Conclusion: *Given the limitations and constraints of the property, the Board finds that the variance reliefs described above are the minimum necessary and adequate to alleviate the identified difficulties. The Board finds the minimum required setbacks will be met with the proposed construction plan and by the Board conducting a site visit after construction to determine whether additional screening is necessary. In reviewing all relevant facts in the record, the Board determines this outcome is the minimum variance necessary and adequate to alleviate the difficulty shown by the Applicants and that also will preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.*

Draft findings were prepared by the Board and were read and discussed by the Zoning Board of Appeals at a public meeting.

Adopted May 7th, 2019

RESOLVED,

The Town of Marbletown Zoning Board of Appeals grants an Area Variance to Mazdack Rassi for the lands situated at 17 Vly Atwood Road, Stone Ridge, NY, known as SBL: 54.4-1-8.211, and located in the 'A-3' zoning district for a 20'X40' inground pool situated in the front yard.

The Site Plan dated February 27th, 2019 is approved with the following conditions.

CONDITIONS of APPROVAL for the APPLICATION:

- 1.) Payment of all outstanding fees to be paid in full prior to signature on plat.*
- 2.) Obtain building permit from the Town of Marbletown Building Department.*
- 3.) Any and all associated map notes added to the plat.*
- 4.) Prior to issuance of a Certificate of Occupancy, at least two members of the ZBA shall conduct a site visit to ensure no further screening is necessary.*
- 5.) No further structures may be erected between the principal residence and Vly Atwood Road without a variance from the Zoning Board of Appeals.*

The Town of Marbletown Zoning Board of Appeals further grants the authority to the Zoning Board of Appeals Chairman to certify all conditions have been completed without further resolution and to sign and date the plat at such time.

EFFECT of PRELIMINARY APPROVAL:

- 1. This Area Variance and associated conditions shall be binding upon the applicant and all successive owners of the land so long as such use(s) shall occur.*
- 2. This approval shall remain effective as an authorization to secure the required permits and establish the use(s) for a maximum of one year from this date of approval and be considered null and void unless the applicant shall have submitted written request and the Zoning Board of Appeals shall have adopted such resolution granting an extension and provided the applicant has submitted proof of having diligently pursued the implementation of the plans.*

Draft resolution was prepared and were read, discussed and amended by the Zoning Board of Appeals.

Adopted May 7th, 2019, by the following vote:

Ayes: 3 Nays: Absent: 3

Motion made by Mr. Husta

Seconded by Mr. Nilsen

OTHER MATTERS:

Churchill:

Mr. Husta motioned to accept the screening provided for the Churchill Garage. Mr. Nilsen seconded the motion.

All in favor. Motioned Carried.

3 ayes, 0 nays, 0 abstain, 3 absent

Hurley Motorsports:

The Board discussed the previous classification of the application under SEQR.

Mr. Perry motioned to rescind the classification of Type I under SEQR. Mr. Nilsen seconded the motion.

All in favor. Motioned Carried.

3 ayes, 0 nays, 0 abstain, 3 absent

Mr. Perry motioned to classify the application as an uncoordinated unlisted action under SEQR. Mr. Nilsen seconded the motion.

All in favor. Motioned Carried.

3 ayes, 0 nays, 0 abstain, 3 absent

TOMZBA May 7th, 2019
REGULAR MEETING

Mr. Perry motioned to adjourn the meeting at 7:45PM. Mr. Husta seconded the motion.

All in favor. Motioned Carried.

3 ayes, 0 nays, 0 abstain, 3 absent

Respectfully submitted,

Shaye Davis, Secretary

Adopted and accepted, May 22nd, 2019