

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

MINUTES OF June 26th, 2019 **Regular 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.

Chairman Perry asked everyone to stand for the pledge to the Flag.

PRESENT:

Paris Perry, Chairman
Tom Smiley, Vice Chairman
Will Husta
Andrew Nilsen

ABSENT:

Kathleen Grambling

Also present:

Shaye Davis, Secretary.

Mr. Nilsen motioned to approve the May 22nd, 2019 Meeting Minutes. Mr. Husta seconded the motion.

All in favor. Motioned Carried.

4 ayes, 0 nays, 0 abstain, 1 absent

High Meadow School

Kurt Sutherland – Architect

Proposes to expand and/replace current Art Building

Located at 7-15 Acorn Way, Stone Ridge. Zoning District – B-1. SBL: 61.20-5-18.111

Kurt Sutherland was present on behalf of the application.

Mr. Sutherland explained where they were at with the application.

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

All in favor. Motioned Carried.

4 ayes, 0 nays, 0 abstain, 1 absent

The Board had no further questions and read through the Decision.

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

A.) “General provisions. Uses allowed by special use permit are hereby declared to possess characteristics which require that each specific use shall be considered an individual use. Any use for which a special use permit is granted by the Board of Appeals shall be deemed a use permitted in the district in which located, except that for any addition or enlargement of such use, a new separate special use permit shall be required for each addition or enlargement. A use allowed by special use permit will be in conformity with the provisions of this chapter and shall affect only the lot or portion thereof for which it shall have been granted”

Finding: Under Marbletown Law (200-46), High Meadow School has a special use permit that was granted June 26th, 2011 by the Board of Appeals, deemed a use permitted in the district in which it is located. Part 200-46 A requires a separate special use permit to be required for each addition or enlargement. A use allowed by special use permit must be in conformity with the provisions of Marbletown Law 200-68B, 200-50, and Appendix A and shall affect only the lot or portion thereof for which it shall have been granted.

B.) “Required plan. A plan for the proposed development of a site for a use allowed by special use permit shall be submitted with the application for a special use permit to the Board of Appeals, and such plans shall show the location of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that may be necessary to determine if the proposed special use meets the requirements of the chapter”

Finding: This property has historic designation, it was classified as Farmer’s Daughter, therefore SHPO was consulted for possible design options regarding the building in question. SHPO gave the following options:

Option A - Restore the old building and place the addition behind (away from Rte. 209)

Option B (1) - Relocate the old building on the property and build new building at present location

Option B (2) - Remove old building and build new building

High Meadow School gave the above two options (outlined in the Reason for Request section) which are labeled as A and B. The school will determine which option to use based on the funding raised by the school to complete the project.

The above plot plans, for options A and B, demonstrate that High Meadow School meets all of the requirements for 200-50 and Appendix A of the Design Guidelines for both of the proposed options.

Reviewing the two plot plans, Option A and B, under Section 200-68B: consideration was given to the public health, safety, welfare, comfort and convenience of the public in general and users of the proposed development and of the immediate neighborhood in particular.

C. “Basis for deliberation; general provisions. Before issuing a special use permit, the Board of Appeals shall take into consideration the public health, safety, morals and welfare, and shall assure itself of the following:”

1.) “That there shall not be any detrimental effect by the establishment of such use on other uses within the district.”

Findings: This new structure will not increase the number of classrooms at the school. This construction is an up grading of the building to a more useable building with an increase in the music classroom size.

Conclusion: This building will have the same use (music education) as the building currently in this location. The use will not change, therefore there will be no detrimental effect. The applicant already has an approved SUP for this use in this location.

2.) “That such use will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls, fences, and parking areas will not discourage the appropriate development and use of adjacent lands.”

Findings: The new construction meets all the guidelines for 200-50 and appendix A for Group A as written in Options A and B.

Conclusion: The new construction will be larger than the current structure but is still in appropriate proportions to the surrounding buildings. The scale and appearance will be very similar to the existing building it will be added to or replace. The view from Rte. 209 and the surrounding neighbors will be substantially the same.

3.) “That all structures, equipment and materials shall be reasonably accessible for fire and police protection.”

Findings: the proposed new building will be in the same location or directly adjacent and connected to the existing approved building.

Conclusion: The access for fire and police will be the same as present and was previously found to be adequately accessible.

4.) “That the use meets the prescribed requirements for the district in which located, including minimum yard requirements for the district in which located or as further specified in this section and including maximum height, required off-street parking and sign regulations and the following prescribed provisions.”

Findings: *The applicant has shown through submitted documents, site plans, and drawings that the Options A and B meet or exceed Town requirements.*

Conclusion: *The Town of Marbletown has established guidelines for Group A buildings (200-50 and Appendix A) which High Meadow School has met or exceeded. This is not an increase in classrooms but to improve the quality of the building and increase the size.*

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

RESOLVED, The Town of Marbletown Zoning Board of Appeals grants Special Use Permit Approval to High Meadow School for the lands situated at 7-15 Acorn Way, Stone Ridge, NY, known as SBL: 61.20-5-18.111, and located in the 'B-1' zoning district for 2 options for restoring and adding an addition to the historic garage or tearing down the garage and constructing a new classroom building.

The Plat dated April 24th, 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.) *All conditions outlined in the previous decisions of 1992, 1996, 2002, 2005 and 2011 remain in effect.*
- 5.) *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.*

The Town of Marbletown Zoning Board of Appeals further grants the authority to the Zoning Board 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 Special Use Permit approval 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 was read, discussed and amended by the Zoning Board of Appeals.

Adopted June 26th, 2019, by the following vote:

Ayes: 4 Nays: 0 Absent: 1

Motion made by Mr. Husta

Seconded by Mr. Smiley

2019-01 Area Variance

Carter Peabody - Owner

Paul B. Jankowvitz – Architect

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

Located at 105 Cherry Hill Road, Accord. Zoning District: A-3. SBL: 61.3-2-70

Carter Peabody, owner and Paul Jankowvitz, the Architect, were present on behalf of the application.

The Board discussed where the application stood.

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

All in favor. Motioned Carried.

4 ayes, 0 nays, 0 abstain, 1 absent

The Board had no further questions and read the Decision.

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 (200-13) is less relevant to the character of the neighborhood where this property is located. The house was placed at the far end of this 1.78-acre property, on a corner lot (between Hornbeck Lane and Cherry Hill Road) and as*

such the front yard consists of the bulk of the acreage. The house is set back 164' from Hornbeck Lane, 177' from Cherry Hill Road, on a hill (40' above Hornbeck Lane). The remaining setbacks: 57' back yard and 53' side yard does not leave room to place a pool/spa. 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 12' x 50' pool/spa 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/spa and corner of Hornbeck Lane and Cherry Hill 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 1.78-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 Hornbeck Lane and Cherry Hill Road setback requirement. The request is mitigated by both the proposed vegetation plan and the property raising 40' above Hornbeck Lane.*

Conclusion: *In order to render this request less substantial, The Variance will be applicable to this pool/spa structures only and no further structures will be allowed between the principal residence on this corner lot.*

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.*

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/spa structures to be located in the front yard as defined in the zoning law.*

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/spa.*

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 June 26th, 2019

RESOLVED,

The Town of Marbletown Zoning Board of Appeals grants an Area Variance to Carter Peabody for the lands situated at 105 Cherry Hill Road, Accord, NY, known as SBL: 61.3-2-70, and located in the 'A-3' zoning district for a 12' X50' inground pool and spa situated in the front yard.

The Site Plan dated 12/23/18 with modifications on 4/18/19 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 Hornbeck Lane without a variance from the Zoning Board of Appeals.*
- 6) No further structures may be erected between the principal residence and Cherry Hill 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 Variance Approval:

- 3. 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.*
- 4. 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 June 26th, 2019, by the following vote:

Ayes: 4 Nays: Absent: 1

Motion made by Mr. Smiley

Seconded by Mr. Husta

2019-03SUP – Hurley Motor Sports Solar

Applicant: Solar Generation Projects, LLC

Property Owner: Sloan Hoffstatter

Proposes 200.KW community solar generating system.

Located at 2779 Route 209, Kingston. Zoning District: B-2 SBL: 62.1-3-40.220

Samuel Wilkinson and Paul McMenemy from Solar Generations, and Nadine Carney from Peak Engineering were present on behalf of the application.

Mr. Wilkinson explained the current status of the application. He stated that they had submitted an updated long environmental assessment form and site plan. He explained the site plan to the Board. He noted that the owner did not want to cut any trees down if possible, which was how they came up with the layout for the arrays.

The Board and applicant discussed the visual impact on a neighboring parcel. The discussed planting the trees with the 50-foot buffer to help along with what types of trees to plant and size.

Mrs. Carney noted that the issues with the visual impacts would be covered under the Site Plan Approval with the Planning Board as well.

There was no further discussion.

2019-02SUP – CES Marbletown Solar

Applicant: CES Marbletown Solar, LLC

Property Owner: Aldarosi Enterprises, Inc. C/O Allan Harari

Proposes a 5 MW (AC) community solar generating system on approximately 24 acres of the 301 acres.

Located at 2675 Route 209, Kingston. Zoning District: R-1 SBL: 62.1-4-1.2

Michael Moriello, the Applicants Attorney, Allan Harari, owner, Steve Ondishin, and Gavin Nagle, John Conwell and Nick Gorfinkle were present on behalf of the application.

Elizabeth Axelson, from CPL Engineering, the Town designated Engineer for this project was present on behalf of the application.

Steve and Gavin gave a presentation to the Board and public. They addressed the fence detail around the arrays along with the emergency details and the decommissioning.

Ms. Axelson asked if the project was private or community.

Mr. Ondishin stated that ConEd Solutions will lease the property for 25 years and operate it for Community Solar.

Chairman Perry opened the meeting for public comment regarding SEQR.

Marian McCorkal stated that she and the Historical Society were concerned about the Right of Way to Mr. Harari's property was on the Ulster County Historical Society's property and what was going to be done to the current driveway there. She was also concerned about the utility access that would be needed for the power lines.

Members from ConEd Solutions responded to her concerns the best they could.

The Board reviewed Part 2 of the Environmental Assessment Form as a start. They did not accept the Part 2 at the time.

2019-03AV – High Falls Central, LLC

High Falls Central, LLC – Owner

Willingham Engineering – Engineer

Proposes to subdivide .52 acres into 2 separate parcels with existing buildings on each. One lot does not meet lot size requirements for the B-1 zoning district.

Located at 107 Main Street, High Falls. Zoning District: B-1 SBL: 70.46-2-3 Acres: .52

Matthew Towne from Willingham Engineering and Aiden Quinn were present on behalf of the application.

Mr. Towne explained to the Board that they wanted to subdivide the lot into two parcels putting the Post Office building on one parcel and the cottage constructed in 2009 in the back onto its own parcel.

Chairman Perry stated that they would need to have an easement for the septic system being on the other lot and a right of way for access to the cottage/back lot.

Mr. Towne stated that he had reached out to the Board of Health regarding the septic and the easement and was waiting to hear back.

Mr. Husta stated that there was a section in the Town of Marbletown Code that would waive the requirements for a subdivision in this particular zoning district if they met certain requirements.

200-24€ states:

“In a B-1, B-2 or SR District, where permitted residential and business uses are located in separate, existing structures, the required lot area shall be waived conditioned on the finding that the septic system and water supply are adequate and the required parking for all the uses can be met. If not, the intensity of the individual uses may be reduced until septic, water and parking requirements can be met.”

The Board discussed having the Code Enforcement Officer rereview the Code Review Form and have the Planning Board just look at a subdivision.

There was no further discussion.

Mr. Nilsen motioned to adjourn the meeting at 9:18PM. Mr. Smiley seconded the motion.

All in favor. Motioned Carried.

4 ayes, 0 nays, 0 abstain, 1 absent

Respectfully submitted,

Shaye Davis, Secretary

Adopted and accepted, July 24th, 2019