

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

MINUTES OF September 25th, 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
Kathleen Grambling
Andrew Nilsen

ABSENT:

Will Husta

Also present:

Shaye Davis, Secretary.

2019-04AV – Donald Beesmer – New Application

Proposes construct an 10X18 foot shed 18 feet from the property line. As per Section 200-20 of the code, for an R-3 zone if requires a 30-foot set back from the property line.

Located at 11 Mickle Drive, Stone Ridge. Zoning District: R-3 SBL: 61.4-2-45 Acres: 1.0

Donald Beesmer was present on behalf of the application.

Chairman Perry opened the meeting for public comment.

No one from the public spoke on behalf of the application.

Mrs. Grambling 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 read the proposed 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 rear yard restrictions were designed to protect the views of surrounding neighbors and to reduce encroachment on neighboring properties. This requirement for accessory uses and structures to be placed 30' from the rear yard as defined in the Zoning Law 200-20 is less relevant to the character of the neighborhood where this property is located. There is an existing allowed smaller building 18' from the rear yard and in line with the denied proposed/existing structure. The house is located on a small lot (1.02 acres) and has both a pool and leech field to avoid. Moving the proposed building 30' from the rear yard would place it 6' from the pool and create a view of seemingly haphazard scatterings of buildings on a small lot. Keeping the proposed somewhat larger building in line with the existing woodshed creates a neater appearance. The proposed building is used for storage and houses tools and yard equipment which is more aesthetically pleasing than to have this equipment scattered in the yard. There is a considerable amount of shrubbery and foliage to shield this building from the neighbors to the rear, and it is more than 60' from that neighbor's house. Also, there are similar structures in the neighborhood. 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 within the 30' rear yard setback front yards is to protect neighbors. However, the small size of this lot, the location of the existing leech field and pool, make the placement of this proposed building in line with an existing shed a logical solution. Allowing the placement of this new 10' x 18' building 18' from the property line will not create an undesirable change in the character of the neighborhood nor a detriment to nearby properties.*

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: *Finding: The placement of this structure outside the 30' setback and avoiding the leech field would place it 6' from the pool and create a less appealing view of seemingly haphazard scattered structures on a small lot.*

Conclusion: *The Board finds based on evidence submitted to it, requiring the Accessory structures to be placed outside of the rear 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 existing structures, the small size of the lot and the location of the house leave no better alternative placements than to place the structure within the rear setback. The request is mitigated by both the existing vegetation which creates a visual barrier and the existence of similar structures in the neighborhood.

Conclusion: The Zoning Board of Appeals renders this request less substantial and a reasonable variance.

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 Applicant to comply with placing the accessory structure wholly outside the rear yard setback as defined in the zoning law would not be as aesthetically pleasing. Not granting the variance would force the owner to move the structure closer to the pool and house rather than in line with an existing woodshed at the back of the property.

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 structure presently located in the rear yard setback 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 Applicant sought variance relief is self-created in that he placed to a larger than allowed storage shed within the rear yard setback.

Conclusion: The Applicant’s hardship was self-created. The Town code allows accessory 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 provided the health, safety, and welfare of the Town and its residents are balanced. The Zoning Law requiring construction outside of the rear yard setback 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 rear yard setback as defined in section 200-20 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 relief described above is the minimum necessary and adequate to alleviate the identified difficulties. The Board finds the minimum required setback has been met. 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 Applicant and that also will preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.*

Adopted September 25th, 2019

RESOLVED,

The Town of Marbletown Zoning Board of Appeals grants an Area Variance to Donald Beesmer for the lands situated at 11 Mickle Drive, Stone Ridge, NY, known as SBL: 61.4-2-45, and located in the 'R-3' zoning district for a 10'X18' storage shed in the back yard 18 feet from the property line.

The Site Plan dated June 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.*

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 September 25th, 2019, by the following vote:

Ayes: 4 Nays: 0 Absent: 1

***Motion made by Mr. Smiley
Seconded by Mr. Nilsen***

OTHER MATTERS:

Mr. Nilsen motioned to pay Peak Engineering out of the Escrow account for Hurley Motorsports. Mr. Smiley seconded the motion.

All in favor. Motioned Carried.

4 ayes, 0 nays, 0 abstain, 1 absent

Mr. Smiley motioned to adjourn the meeting at 7:54PM. Mrs. Grambling seconded the motion.

All in favor. Motioned Carried.

4 ayes, 0 nays, 0 abstain, 1 absent

Respectfully submitted,

Shaye Davis, Secretary