



Town of Marbletown
Zoning Board of Appeals
1915-1925 Lucas Avenue
Cottkill, New York 12419

ZBA Meeting Minutes - Approved April 27th, 2022

Meeting Called to Order – Tom Smiley – Board Chair

6:02 P.M.

Pledge of Allegiance

Quorum Call:

Board Present: Tom Smiley, Kathie Grambling, Zach Bowman, Brendan Masterson, Egidio Tinti

Board Tardy: Andy Nilsen (Arrival 6:25)

Town Staff Present: Shawn Marks

Announcements: Michelle Solcberg is not available tonight, Shawn Marks will be Tech and Scribe; Brendan Masterson, alternate, will be a Voting Board Member at this time

Business:

1.) 2022-02 AV – Norman Area Variance Application – Public Hearing

Applicant: Ann Norman

Address: 3772 Main Street, Stone Ridge, NY, 12484

SBL: 61.20-4-24.100, SR/E Zone, 0.61 acre

Requesting Variance for Accessory Apartment

Applicant Ann Norman provided an overview of the Variance Request

- Dilapidated garage and shed which was rebuilt
- Wishes to create an Accessory Apartment on the second floor for the purpose of having a space for a caretaker so she can “age in place”

Motion to Open the Public Hearing made by Zach Bowman, second by Kathie Grambling, call of the roll with unanimous Aye. (5-0)

Call to the Board for any questions: None

Call to the Public for comment or questions:

Bill Terpening – Cherry Hill Road – Submitted letter into record and read the letter to the Board and audience.

*****A copy of the letter submitted into record by Mr. Terpening may be obtained by contacting the Planning & Zoning Office*****

Tom Smiley: For the Record, Bill has submitted the letter he read into record



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The Board discussed the Application, findings of the Site Visit, zoning code pertaining to existing non-conforming structures, the density schedule, setbacks, and the application of the accessory Apartment Law of 2022.

Zach Bowman provided a summary overview of the Application, his Site Plan findings, his discussions with the Applicant, and the Accessory Apartment Law:

- Applicant requesting a setback area variance for the creation of the Accessory Apartment
- The structure was recently updated and wishes to create the dwelling in a 2nd floor studio space
- Structure has a non-conforming pre zoning setback of 1 foot 7 inches
- The Applicant did submit previously but withdrew due to conflict with the Code at the time, and thanks to public hearing we learned of the conflict and the law was revisited and updated
- The approval is essentially on the non-conforming setback for the structure
- Applicant has a 3-bedroom house, and 1 bedroom is an office. I think for the applicant to create the apartment in the room directly next to her bedroom creates a privacy hardship.
- The intent of the accessory apartment law applies to this situation.
- Cannot be a Short-Term Rental
- There is a typo in the law which is known to be a typo and is being addressed
- There is not a need to a variance for the accessory apartment itself, but on the setback. The variance is required for the Planning Board to allow the Special Use
- The neighborhood has many structures with an existing non-conforming setback

Tom Smiley: Setback variance is the only thing that is requested or required based on the Code

Kathie Grambling: Strongest point I feel is that we have a resident who is requesting to age in their home. People who are in their homes do much better than in a nursing home. Considering COVID, and depression, etc., people do much better if they can age in their own homes. The purpose of the law is to help people maintain their dignity and their lives.

Ann Norman (Applicant): I did not pick that spot. That just happens to be the spot where the old garage was. It was grandfathered in. I just used what was there because I had the right to.

Tom Smiley: Bill does raise some valid points with the reference of the new structure vs the old structure. As Ann pointed out, she did have that location by right because of the pre-existing use. The paperwork was filed as a studio and its now being requested for the Accessory Apartment. What is the interpretation of the Board in terms of that structure? Does the Board consider that a new construction or is the intent of the law to prevent someone from replacing an existing structure, with structural issues, with one that has no greater impact, a comparable structure in the same location, with no impact on the existing setback?

Zach Bowman: I don't view it as that. This is a structure that needed upgrade anyways. It's not starting from scratch. I feel viewshed is less affected when you're talking about updating an older structure. If this had gone further into the setback, I don't think there would have even been a building permit. I feel the law is preventing that.



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Tom Smiley: Does everyone else share that opinion? That for an existing structure that can't serve the accessory dwelling purpose, that it could be rebuilt pre-existing non-conforming and still be considered an "old structure" and not "new construction"?

Kathie Grambling: If we don't allow a dilapidated structure to be repaired and rebuilt, then there would be a lot of structures in the town that could no longer be utilized safely. I would say that its part of the intent.

Shawn Marks (CEO): If that's not the opinion of the Board, it would upset and overturn the Code Enforcement practice in the Town for well over 40 years. There are many residences that have been rebuilt and rehabilitated that have been rebuilt on the existing setback using that CEO determination of the Code.

Bill Terpening: I think the law was poorly written and that's causing some of the confusion that I see.

Tom Smiley: What I'm hearing is that the Board agrees that the Board will view this as an existing structure. Let's discuss the point of existing character of the neighborhood. The Board has a precedent of generally granting a setback variance on pre-existing non-conforming structures. Essentially any building that was in place since the start of and before zoning in our town. They are grandfathered in at that setback. That would be consistent with prior board actions. It appears there are many structures that are along boundary lines on many of the neighboring parcels.

Ann Norman (Applicant): the neighbor has voiced to me twice that they like the design and they have no objection to the garage nor the apartment.

Zach Bowman: The neighbor provided an email that was sent to Shawn in support of the proposal

Tom Smiley: As to Bill's point, the existing neighbor doesn't have ultimate sway. In granting the variance, it runs with the land, and the variance will exist long after we're gone.

The Board reviewed Photos taken by Zach Bowman during his Site Visit

Motion to Close the Public Hearing made by Kathie Grambling, second by Zach Bowman, call of the roll with unanimous Aye (5-0)

The Board has closed the Public Hearing and the Applicant will hear from the Board within 62 days

2.) 2022-04 AV – Gray Sammons Area Variance – New Application

Applicants: James Gray and Olivia Sammons
Address: 219 Old Kings Highway, Accord, NY, 12404
SBL: 69.4-1-8, R1, 3.00 acre
Requesting an Area Variance on a 40-foot-tall accessory building

Applicant provided an overview of the Application and the variance request, and answered the Boards questions:



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Olivia Sammons (Applicant):

- We bought the property in 2008 and used it as a weekend home until the pandemic when we moved up here full time
- My husband and I are artists and designers. I'm an interior designer and my husband is a furniture maker. We're looking to create an accessory structure to use as a studio for photographing and documenting our work. We're looking for a space to work on prototypes and document for advertising
- We need the ground level to be high for our work, and the subsequent floors follow that
- We wish to keep the exterior modest and simple, but we also need light for our work
- We still have a studio in Brooklyn where production and assembly is done
- In moving up here full time, we're working remotely and it's essential for us to have a space to work comfortably and have the space to do so
- We work with lighting and furniture. We're looking to creating more art, painting, and photography. We're hoping to use the 3rd floor for storage
- There is also a small one car garage, an exercise room, the studio, and a lounge area for my family.
- We're looking to be able to have a good open space to prototype and document the items in a real-life space. Total building height is 40 feet.
- We're looking to build a structure that would not be out of place for the character of the neighborhood so it wouldn't be out of place
- There was an old chicken coop/barn that was in the place where we would like to place this new accessory structure. We were not able to salvage it and we had to demo it.
- The fence we built is 6 feet tall. We intend to keep the existing trees and place the structure in the cleared area where the old building once was
- In the existing garage, we have one car. We just replaced the roof because there was a leak. There's a lot of water damage on the inside.

Amanda Repp (Architect for Applicant):

- Part of the height, and how it compounds, we needed to large floor to ceiling height, 10 feet, due to the nature of the products and the work that they are building and designing on that lower level. In doing that, the floor depth increased and then compounded.

Tom Smiley: The Use proposed is a permitted use in the district for which it's proposed. It appears that there are no issues with the side or rear property line setbacks. The height variance is the only matter that will apply. It's an R1 zone, so 3 acres minimum for residential use by right. Could you achieve the desired outcome of the project with a shorter building?

Olivia Sammons: It's an accessory building so it's not life or death, but our answer is no. We truly need the height to effectively be able to use the space as a studio and an office to its full potential.

Shawn Marks (CEO): I'm familiar with the area having been down on the Beverly Lane subdivision and in my travels. There's a gully that runs along the southernly property line that has a grade of about 15%. It breaks at the back of their rear yard making it difficult to place the accessory structure on the other side



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of the parcel. The existing structure that was in the location where they propose to build had been demolished for a period of time which exceeded the code limitations to rebuild.

The Board reviewed the proposed site plan, the overhead views of the parcel and the neighborhood, and the grade and slope of the rear property line.

Board requests a revised site plan with locations of the well, the septic, the distances to all neighboring residences in all directions, and the existing significant trees and their locations.

Zach Bowman: We'll need to discuss a SEQRA classification with this application.

Kathie Grambling to be Point for the Application

Andy Nilsen is now a Voting Member, Brendan Masterson returns to Alternate

Motion to Accept the Application, and to set a Public Hearing for May 25th, 2022, made by Andy Nilsen, second by Zach Bowman, call of the roll with unanimous Aye (5-0)

3.) 2022-03 AV – Peterson & Botta Area Variance Application – Public Hearing

Applicants: Katherine Peterson and Juliana Botta

Address: 206 Rickey Road, Stone Ridge, NY, 12484

SBL: 69.8-1-5, R3, 0.34 acre

Requesting an Area Variance on a 7-foot-tall fence on a corner lot

Katie Peterson & Juliana Botta – Applicants

- Requesting a height variance for a 7-foot fence to run along the northeast corner of the property that runs along Route 213

Motion to Open the Public Hearing made by Kathie Grambling, second by Zach Bowman, call of the roll with unanimous Aye (5-0)

Call to the Board for question or comments: None

Andy Nilsen provided a summary overview of Application, the Variance Request, and his Site Visit

- The fence will be behind the trees along the property line on route 213
- The view from the photographs provided depicts the corner clearance. The location of the fence would not obstruct views in the intersection and beyond the requirements of the Code
- The fence will allow light and air to pass through, but not views
- The height is dictated by the location along the side of the road. If the house was further from the road, the height could be less. The elevations there along the yard, the 7 feet is the minimum I feel is needed to give them privacy
- It's a corner lot, which is what required the variance. If it was allowed by right, it could be 8 feet.
- The accepted front of the house is along Rickey Road, the accepted visual side of the house is along Route 213



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- The fence does not project past the front line of the house. The fence is wholly on the side and rear of the house. There's no fence in the visually accepted front yard, so there is no visual obstruction to the lot and the roadway. We're basically talking about a fence on the side of the house, no one would disagree with that.
- The fence will be screened by the existing trees, and some of the trees are already as high as the fence will be.

Call to the Public for Comments: None

Tom Smiley: We should have a discussion on whether this will have an impact on viewshed. My perspective is that it will not have any impact on a view of concern to the community, but we should discuss this. Does putting up this fence obstruct a view of importance to the community?

Additional call for questions or comments: None

Motion to Close the Public Hearing made by Zach Bowman, second by Kathie Grambling, call of the roll with unanimous Aye (5-0)

The Board has closed the Public Hearing and the Applicant will hear from the Board within 62 days

4.) March 2022 Meeting Minutes

Motion to approve the minutes of the March 23, 2022, ZBA Meeting made by Zach Bowman, second by Andy Nilsen, call of the roll with unanimous Aye. (5-0)

5.) 2022-03 AV – Peterson & Botta Area Variance Application – Public Hearing Closed

The Board discussed the application of the Corner Lot Code when compared to the visually accepted front of a house and the visually accepted side of a house. The Board agreed that the use of the descriptor "visually accepted" or "accepted side", in relation to the front and side of a house, should be considered when discussing the impact of a fence on a corner lot.

The Board discussed the new Fence Code and its implementation. The discussion included consideration to views, viewsheds, code intent, corner lots, and corner lot clearances for sight distance. The application of the new Fence Code and its relation to the Applicant's proposal before the Board.

The Board read, reviewed, discussed, and edited the draft determination.

Motion to Approve the determination and grant the Variance made by Zach Bowman, second by Kathie Grambling, call of the roll; K. Grambling Aye, Z. Bowman Aye, E. Tinti Aye, A. Nilsen Aye, T. Smiley Aye (5-0)

The Board took a 10 Minute Recess

Egidio Tinti departed, Brendan Masterson is now a Voting Member



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6.) 2022-02 AV – Norman Area Variance Application – Public Hearing Closed

The Board discussed the application of the Accessory Apartment Law to the variance request. Further discussion regarding the character of the neighborhood, the significance of the variance request, mitigations for hardship, and screening along the property line nearest to the structure in question.

The Board read, reviewed, discussed, and edited the draft determination.

Motion to approve the Determination and grant the Variance made by Zach Bowman, second by Kathie Grambling, call of the roll; K. Grambling Aye, B. Masterson Aye, Z. Bowman Aye, A. Nilsen Aye, T. Smiley Aye (5-0)

The Board discussed new Application # 2022-04 AV, reviewed the Application File.

Motion to adjourn made by Zach Bowman, second by Kathie Grambling, call of the roll with unanimous Aye. (5-0)

Meeting Adjourned

9:15 P.M.

DRAFT 5/9/2022

APPROVED 5/25/2022

SUBMITTED INTO RECORD

MICHELLE SOLCBERG