



Town of Marbletown  
Zoning Board of Appeals  
1925 Lucas Avenue  
Cottkill, New York 12419  
[planning@marbletown.net](mailto:planning@marbletown.net)

Zoning Board of Appeals  
Approved Meeting Minutes  
March 28<sup>th</sup>, 2023

Meeting Called to Order

6:05 P.M.

Pledge of Allegiance

Quorum Call:

Board Present: Tom Smiley, Andy Nilsen, Zach Bowman, Egidio Tinti, Nancy Birdsall (Alternate)

Board Absent: Kathie Grambling

Town Staff Present: Shawn Marks

Announcements:

The Chair recognizes Nancy Birdsall as a Voting Alternate for the duration of the meeting

Business:

**1.) 2023-01 AV – Cherries Area Variance – New Public Hearing**

Lawrence O'Toole; 25 Hillcrest Drive, Kerhonkson, NY, 12446

4162-4166 Route 209, Stone Ridge, NY, 12484

SBL: 69.2-3-36; R1 Zone; 0.89 Ac +/-

Requesting a Variance for Business Signage

Lawrence O'Toole in attendance for the Application

Zach Bowman provided an overview of the Application and the Variance Request:

- "Ice Cream Cone" part of the business freestanding sign; freestanding sign has been in existence on site since the 70's; a mainstay and iconic in nature
- Code contains a sundown on existing non-conforming signage
- Variance is requested for exceeding the maximum number of signs, total size of signage, and number of faces in the Residential District
- Speed limit on Route 209 is 55 mph; question of if the allowable sign area is enough to be effective and provide a safety benefit for traffic and patrons of establishment
- Essentially a 100% variance based on the size of the sign
- Consideration given to alternate locations on the property
- Variance request is substantial and the Board will need to dig into the details



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Lawrence O'Toole for the Application:

- Sign was taken down to be repaired after being damaged; sign was carried over from previous owners and was pre-existing
- "Ice Cream Cone" was not considered during initial Sign Application and once repaired we moved to close the permit and discovered the issue
- Applied for a Sign Permit on new signage which was approved; design and application submitted included an new image of an ice cream cone on the new signage but had to be modified because the script was too small to be effective with the speeds on Route 209; was under the impression that the existing "Ice Cream Cone" would be able to remain because it's existing and grandfathered; advised of non-conforming signage sundown and need for Variance
- The signage is not overly large and is important to locating Cherries and to safely navigate the high speeds along the stretch of Route 209; ultimately helps traffic flow and traffic safety; ability to know sooner that an attraction is ahead by seeing the Ice Cream cone and not necessarily reading any script
- Sign is a hallmark of the neighborhood and has existed for decades

***Motion to Open the Public Hearing made by Z. Bowman, second by E. Tinti, call of the roll with Unanimous Aye. (5-0)***

***Call to the Public for Comment:***

Bill Terpening: Mr. Terpening spoke on Code Section 200-42 and the requirement for the Planning Board to review Freestanding Signs; consideration for traffic flow, line of sight, sign distance.

Evelyn Peterson: Why can't the sign be all chocolate instead of vanilla and chocolate?

James Still: The Town has Zoning Codes for a reason; Cherries has been an inconsiderate neighbor and disregarded for the neighborhood and property owners; voiced concern for the flow of traffic around the sign and expressed concern for the potential of the sign obstructing the view of a driver or pedestrian by the placement of the sign; Residents have to abide by the Code.

Erin Mahoney: Lifelong resident, grew up diagonal from Cherries when it was a walk up ice cream stand; Owner has been pushing boundaries with the Town Code and has been an inconsiderate neighbor; feels the existing signage is plenty adequate as it exists without the Ice Cream cone; cites concerns with parking along the shoulders of Route 209 despite the current "No-Parking" signage in place; traffic has increased significantly; Town has rules for a reason and should be abided by; State DOT has advised that the parking situation is a "Law Enforcement Matter as signs have been placed".



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*Photo of parking provided by E. Mahoney accepted by the Board and entered into record*

***Call to the Public for additional Comment:*** None

Lawrence O'Toole: Feels the signage goes a long way to enhancing traffic safety and site safety and addressing some of the concerns that have been raised; The sign greatly helps with visibility on a high-speed road; provided video files to the Board to document the effectiveness and need for the additional signage; most other concerns raised tonight with regard to parking and the site are being managed and addressed through other Permitting processes but are duly noted on my behalf; Ice Cream Cone is a cherished part of the neighborhood and has been there for decades.

*The Board inquired with the Secretary as to the receipt of any emails, calls, or concerns relating to the Sign Variance Application; none received*

***Motion to Close the Public Hearing made by Z. Bowman, second by E. Tinti, call of the roll with Unanimous Aye. (5-0)***

*The Applicant was advised that the Board has 62 days to consider the request and vote on a Determination; Applicant will receive notification from the Board*

## **2.) 2023-02 AV – Pagano Area Variance – New Application**

Richard Pagano

31 Vly Atwood Road, Stone Ridge, NY, 12484

SBL: 54.4-1-8.220; A3 Zone; 3.49 Ac +/-

Requesting an Area Variance to place a Carport within the required yard setback and for an existing Shed which is within the required yard setback

Rich Pagano in attendance for the Application

Chairman Smiley provided an overview of the Application and the Variance Requested:

- Request for an area variance on a proposed carport; setback 22 feet from property line
- During Site Visit, CEO noted 2 additional accessory structures that were not properly permitted
- Chicken COOP only requires zoning permit, meets setbacks
- Storage Shed will require a Variance; 20 feet from property line

The Applicant, Rich Pagano, provided an overview of his Variance Request, and engaged in discussion with the Board:



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- Proposed carport to be located at the end of the driveway, natural location, best location for plowing of snow and snow removal
- Carport is proposed to be at edge of the asphalt; 22.5 feet from property line
- Originally considered a one car garage, but Carport is sufficient enough and a garage would impede our vista
- Medical condition that has effect upon ability to clear snow/ice from car and driveway
- Proposed location of carport is 300 feet from the road, difficult to see from road
- My neighbors have provided some positive feedback about the plan and the carport
- Chicken coop used for storage; lawn shed used for storage of lawn equipment; constructed by previous owner without permits; understands that the CEO needed to address the matter and is willing to legally permit the structures
- Existing un-permitted lawn shed is 200 feet or more from road; surrounded by trees
- Septic field and underground electric limits options on right side of front yard; topography on left makes it difficult to place shed; rear yard limited space and wishes to maintain the current family use of the space

*The Board reviewed the Site Plan and photos provided by the CEO on the overhead projector*

*The Board engaged in discussion with the Applicant about the details of the request*

Andy Nilsen to be Point Person for the Application; will set up a Site Visit with the Applicant

***Motion to Set a Public Hearing for April 25<sup>th</sup>, 2023, made by A. Nilsen, second by Z. Bowman; call of the roll with unanimous Aye. (5-0)***

***Motion to Accept and Open the Application made by A. Nilsen, second by Z. Bowman; call of the roll with unanimous Aye. (5-0)***

### **3.) 2023-03 AV – Hines Area Variance – New Application**

Elizabeth Hines

152 Stone Dock Road, High Falls, NY, 12440

SBL: 69.4-2-19; R1 Zone, 1.11 Ac +/-

Requesting an Area Variance to place a Shed within the required yard setback

Elizabeth Hines in attendance for the Application

Chairman Smiley provided an overview of the Application and the Variance Requested:

- Proposal to place a 12' x 24' storage shed 15 feet from property line in required yard
- Parcel is undersized; Stone Dock Road subdivision with undersized parcels
- Existing LP storage tank and Generator along same property line



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- 20-foot drainage easement exists at the property line; 10-foot easement onto each side of the property line for the Golf Course
- Parcel is located within a FEMA Flood Zone

*The Board reviewed the Site Plan and supporting documentation on the overhead projector*

The Applicant, Elizabeth Hines, provided an overview of the Variance Request, and engaged in discussion with the Board:

- Existing shed in left side yard is dilapidated and no longer safe; replacing it leaves new shed in the line of ball strikes from golf course which will damage the structure
- Proposes new shed to be 15 feet from the property line; meeting the setback requirement would move the shed out in the middle of the yard which would obstruct neighbors views of open space
- Golf Course easement takes up majority of rear yard limiting options
- Location of septic inhibits placement of new shed on left side
- Underground electric inhibits placement of new shed on left side
- Drainage easement along property line, new shed would be clear of the easement
- Generator and LP storage tank in the right-side yard; shed proposed to be in line and behind these utilities
- Many sheds near property lines in the neighborhood; subdivision with small parcels and mostly all on my side of the road have an easement of some sort which effects options for placement of accessory structures
- 2 neighbors have provided letters of support for placement of the shed

*Letters of support provided by neighbors accepted by the Board and entered into record*

Egidio Tinti to be the Point Person for the Application

***Motion to Set a Public Hearing for April 25<sup>th</sup>, 2023, made by A. Nilsen, second by E. Tinti; call of the roll with Unanimous Aye. (5-0)***

***Motion to Accept and Open the Application made by Z. Bowman, second by A. Nilsen; call of the roll with Unanimous Aye. (5-0)***

#### **4.) 2022-06 AV – Mollins Area Variance – Open Public Hearing**

Reed Mollins

71 Cedar Hill Road, High Falls, NY, 12440

SBL: 70.3-5-3.100, R1 Zone, 3.00 Ac +/-

Requesting a Variance to place a Garage within the required front yard setback



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Applicant Reed Mollins not in attendance

Point Person Egidio Tinti reports that there have been no new submissions; the Applicant reported that he is still in the process of gathering the information requested by the Board in November 2022 and has a contactor with excavator set to return to the site to investigate and “further explore” options for placement in the yard.

Applicant will be contacted by the Application Point prior to the April 2023 meeting to request a status update; Point to then provide suggested course of action for the Board.

***Motion to extend the Mollins Application and Public Hearing to the April 25<sup>th</sup>, 2023 ZBA meeting made by E. Tinti, second by Z. Bowman; call of the roll with unanimous Aye. (5-0)***

Other Business:

1.) Approval of Meeting Minutes

***Motion to Approve the January 2023 ZBA Meeting Minutes made by Z. Bowman, second by A. Nilsen; call of the roll with Unanimous Aye. (5-0)***

2.) Requests to Address the Board

Bill Terpening: Inquired as to if the Board had a decision pertaining to his previous submission in January 2023, “Conflict of Interest, or Appearance of Such”, pertaining to Secretary Shawn Marks and his role as a Code Enforcement Official with the Town.

Chairman Smiley:

- No conflict or concern is found in his duties as a CEO and Secretary to the ZBA unless an Applicant before the Board is formally Appealing, seeking to reverse or overturn, a Decision, Determination, Order, or Violation issued by him, of which the Applicant disagrees with, and feels was made or issued in error. This would also include a request for Interpretation. A potential conflict, or appearance of such, could be of concern under those circumstances, and although he is not a voting member of the Board, a recusal of his duties as ZBA Secretary for that Application would be appropriate and expected. The Board itself is held to recusal standards with actual or potential conflicts.
- A request for a Variance of which he was the CEO who made the Determination for the need of such Variance, or conducted an inspection which led to the determination of need, does not present a conflict or concern in that circumstance the Applicant is accepting the Determination of the CEO and is not in disagreement with the Determination or the Decision, but is instead seeking or asking for a Variance from the



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Board to work within the Zoning Code to allow for a non-conformity because of special circumstances, situation, or need.

- Town Attorney was consulted and is in agreement. In one case, the Applicant is saying the code enforcement officer is wrong, in the other, they accept the determination, but they are Appealing the Zoning itself because they have a special case.

Bill Terpening: The ZBA is Appellate only. A Variance is one option that can be requested, or an Interpretation or both. Variance is an Appeal; all are Appellate cases. My sense is that it's an appeal of whatever decision has been made and asking for a Variance instead. My concern is for the importance of Checks and Balances since they can be so little at the local level.

***Call from the Chair for any additional business***

Paul Wikane: Appreciates the degree of differences between signage within the Town. The Cherries signage appears to be a lot smaller than some of the other signs that are out there. I understand that there must have been some changes over the years with regard to sign sizes, and if you got in under the wire, you could have whatever sign you wanted. With regard to the no parking signs, the neighbor had those installed because he was unable to see when coming out of his driveway because of the parking along 209.

Zach Bowman: The way the law was written, in particular to signs, whether its pre-existing non-conforming, you'll need to seek a variance. The exemption no longer exists with Signs.

*The Chair re-called 2023-01 AV to the floor for continued discussion by the Board*

**1.) 2023-01 AV – Cherries Area Variance – New Public Hearing**

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4162-4166 Route 209, Stone Ridge, NY, 12484  
SBL: 69.2-3-36; R1 Zone; 0.89 Ac +/-  
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***Motion to Classify the Application as a Type II Action under SEQRA made by Z. Bowman, second by E. Tinti, call of the roll with Unanimous Aye. (5-0)***

The Board discussed the following details pertaining to the Variance request:

- Distance above grade; Sight Distance/Clearance
- Visibility of signage from afar in North/South direction
- Traffic Safety; 55 MPH zone on Route 209; visibility of entrance to business
- Legacy sign; 40 years in existence
- Significance of the request





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*The Board read, reviewed, discussed, edited, and voted upon the Determination*

***Motion to Approve the request and Grant the Variance as outlined in the determination made by Z. Bowman, second by E. Tinti; call of the roll: Nilsen, Aye; Bowman, Aye; Tinti, Aye; Birdsall, Aye; Smiley, Aye. (5-0)***

***Motion to Adjourn the meeting made by A. Nilsen, second by Z. Bowman; call of the roll with Unanimous Aye. (5-0)***

Meeting Adjourned

6:46 P.M.

DRAFT SUBMITTED 4/10/2023

MINUTES APPROVED 4/25/2023

Shawn Marks