

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
September 8, 2014 @ 7:30 PM  
STILLWATER TOWN HALL**

**Present:** Chairman William Ritter  
Donald D'Ambro  
Richard Rourke  
Christine Kipling

**Also Present:** Daryl Cutler, Attorney for the Town  
Deborah Osborn, Secretary  
Eric Rutland, Code Enforcement Officer/Building Inspector

**Absent:** Lindsay Zepko, Town Planner  
Paul Male, Acting Director of Building, Planning and Development

Chairman Ritter called the meeting to order at 7:30 P.M. and led everyone in the Pledge to the Flag.

**Approval of Minutes:**

**July 14, 2014:** Mr. D'Ambro made a motion to approve the minutes; Mrs. Kipling seconded the motion and the minutes were approved, 4-0.

**Public Hearings/New Business:**

**ZBA2014-37, Kerr Use Variance, 1512, Route 4**

Chairman Ritter recognized Mr. Don Kerr who presented his proposal to construct an addition to his existing duplex located on Route 4. The parcel is located in an LDR which does not allow for three-family dwellings, and, therefore a Use Variance is required for Mr. Kerr to proceed. Mr. Kerr advised the Board that the proposed addition will be his residence and that he cannot currently afford to make required repairs to the existing duplex.

Chairman Ritter asked if there were any other questions for Mr. Kerr prior to opening the public portion of the public hearing. There were none and Chairman Ritter proceeded to open the hearing to public comment. Chairman Ritter asked if anyone from the public wished to provide comment. There was no public comment and Chairman Ritter closed the public portion of the Public Hearing.

Chairman Ritter asked the Board if they had any further questions for the applicant. There was discussion regarding the purpose of the proposal and the significant concerns for the sub-standard lot size which would also require an Area Variance. Mr. Cutler stated that there are currently three parcels and that Mr. Kerr is in the process of making one. He noted several concerns with the proposal as presented including what Mr. Kerr could anticipate as a reasonable return on the property as it currently is and the uniqueness of the hardship to Mr. Kerr if the variance is not granted. Mr. Cutler stated that there are significant unanswered questions, noting Mr. Male's memo. He stated that the standards in place must be met and that the burden is on the applicant to provide enough information for the Board to be able to make a decision. Mr. D'Ambro asked if it would be appropriate to grant additional time to Mr. Kerr to provide answers regarding his proposal including those related to the adequacy of the existing septic system and well to serve a three-family dwelling. Mr. Cutler stated that he felt it would be in the best interests of the applicant to grant additional time to the applicant. Mr. D'Ambro asked if there was a time limit to table the application, such as 60 days. Mr. Kerr stated that 60 days would be more than adequate. Chairman Ritter addressed the issue of the significantly sub-standard lot and the need for an Area Variance. Mr. Cutler advised Mr. Kerr that he should submit the additional information as soon as possible, well before his application is placed on the agenda in 60 days.

Chairman Ritter asked for a motion to table the application. Mr. D'Ambro made the motion to table; Mr. Rourke seconded and the motion to table was approved unanimously, 4-0.

### **ZBA2014-39, Barshied Area Variance, 65 Flike Road**

Chairman Ritter recognized Mr. Jim Vianna who presented the proposal on behalf of Mr. Robert Barshied. Mr. Vianna stated that Mr. Barshied owns an approximately 44 acre parcel located on Flike Road. Mr. Vianna stated that Mr. Barshied wants to go to the Planning Board to request a 2 lot sub-division, adding that the smaller parcel located on the west side of Flike Road is only 1.48 acres, which is .52 acres less than the required area for the LDR District. Mr. Vianna stated that Mr. Barshied wants to keep one of the lots for himself and eventually sell the other.

Chairman Ritter asked if the Board had any questions for Mr. Vianna prior to opening the Public Hearing to public comment. There were none and Chairman opened the hearing to public comment.

Chairman Ritter asked if there was anyone who wished to provide comment on the proposal.

- Mr. James Kusick of 39 Vanness Road inquired as to whether the possibility of the larger lot being put up for sale in the future would impact the Board's decision regarding the requested Area Variance. Chairman Ritter advised that it would have no impact and Mr.

Cutler added that Mr. Barshied could build now on the one lot. He stated that the road naturally divides the parcel, otherwise, the second lot would probably be larger, not requiring a variance.

Chairman Ritter asked if anyone else wished to provide comment. There was no further comment and Chairman Ritter closed the public portion of the Public Hearing. Chairman Ritter asked the Board if they had any additional questions or concerns. There was further discussion regarding ownership of the roadway. Mr. Vianna clarified that Mr. Barshied owns the roadway and that the Town has an easement. Mr. Cutler initiated a discussion regarding the accessory structures on both parcels and that these would have to be dealt with if not for agricultural purposes. Mr. Vianna stated that the variance is for the residential lot and that there was nothing planned in terms of building in the near future. Chairman Ritter asked if there were any additional questions or concerns regarding the proposal and being that there were none, he asked for someone to move on the SEQRA.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2014 RESOLUTION NO. 15**

WHEREAS, Robert Barshied has submitted an application to the Zoning Board of Appeals for an Area Variance regarding property located on 65 Flike Road, more fully identified as Tax Map Number 243-1-77; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed action is a Type II action and requires no further action or review by the Zoning Board of Appeals;

WHEREAS, the Planning Board reviewed each of the 11 factors contained in Part 2 of the EAF and determined that the proposed action will have no, or only a small, environmental impact;

Now, therefore, be it

RESOLVED, that the Zoning Board of Appeals hereby determines that the proposed action by the applicant, Robert Barshied, is a Type II action and requires no further action or review by the Zoning Board of Appeals.

A motion by Member D'Ambro, seconded by Member Kipling, to adopt Resolution No. 15 of 2014.

A roll call vote was taken on Resolution No. 15 of 2014 as follows:

Member Christine Kipling	Yes
Member Richard Rourke	Yes

Vice Chair Donald D'Ambro	Yes
Chairman William Ritter	Yes

Resolution No. 15 of 2014 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on September 8, 2014.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2014 RESOLUTION NO. 16**

WHEREAS, Robert Barshied has submitted an application to the Zoning Board of Appeals seeking an Area Variance in order to subdivide the lot on property located at 65 Flike Road, Stillwater, more fully identified as Tax Map Number 243-1-77; and

WHEREAS, the Applicant is seeking an area variance, accessory building variance and a set-back variance from the requirements contained Stillwater Zoning Code §3.5(D); and

WHEREAS, pursuant to §14.2(D) of the Stillwater Zoning Law, the Town properly and timely published a notice for public hearing conducted on September 8, 2014; and

WHEREAS, the Zoning Board of Appeals has duly considered the application and the elements necessary to consider the granting of an Area Variance by taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

Now, therefore, be it

RESOLVED, that the Stillwater Zoning Board of Appeals hereby makes the following findings:

1. An undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of the Area Variance because the parcel was split by the road and the road now naturally divides the lot. The barn is within the set-back area, but was pre-existing;
2. The benefit sought by the applicant cannot be achieved by some method, feasible to the applicant to pursue, other than an Area Variance because the road separates the main parcel and no other land is available;
3. The requested Area Variance is not substantial because several other surrounding parcels are of the same size. The road dividing the lot means the lots are, in reality, already separate;

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because the lot size, improvements, and shape are naturally established by the road and the subdivision will have no visible impact; and
5. The alleged difficulty was not self-created because the improvements and lot shape pre-date the Zoning Code; and be it further

RESOLVED, that the application of Robert Barshied for an area, assessor structures, and set-back variance to allow for the subdivision of property located at 65 Flike Road, Stillwater, more fully identified as Tax Map Number 243-1-77, is GRANTED.

A motion by Member Kipling, seconded by Member D'Ambro, to adopt Resolution No. 16 of 2014.

A roll call vote was taken on Resolution No. 16 of 2014 as follows:

Member Christine Kipling	Yes
Member Richard Rourke	Yes
Vice Chair Donald D'Ambro	Yes
Chairman William Ritter	Yes

Resolution No. 16 of 2014 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on September 8, 2014.

**ZBA2014-40, Gagne Area Variance, 1 Ilen Avenue**

Chairman Ritter recognized Mr. Donald Gagne who presented his proposal to build a garage/storage shed for personal use and to build a house in the Spring of next year. He stated that the Area Variance is needed because the proposed building would not meet the minimum width at the front setback line of 125 feet. Chairman Ritter inquired about a water line; Mr. Gagne stated that he has chosen to not put one in until he builds the house. Chairman Ritter asked if there were any questions for the applicant prior to opening the public portion of the public hearing. There were none and Chairman Ritter opened the public portion of the hearing. Chairman Ritter asked if anyone wished to provide public comment.

- Mr. Jerry Myers of 31 Kellogg Road expressed concern as to how the proposal would impact him being that the parcel is accessed by a private right of way between his property and another neighbor's. Chairman Ritter stated that it should not and Mr. Cutler stated that the issue was with the access path and right of way.

There was no further comment and Chairman Ritter closed the public portion of the Public Hearing. Chairman Ritter asked the Board if they had any questions or comments relative to the proposal. Mr. Cutler clarified that Mr. Myers' house has been there for a while and the fact that it

extends into the right of way is not an issue. Mr. Cutler stated that in fairness to Mr. Male, further review of this proposal is in order because new deeds and comments from the surveyor were just provided this evening. Chairman Ritter advised that this application should be tabled to allow for additional review by the Planning Department. Chairman Ritter asked the Board for a motion to table the application. Mr. D'Ambro made a motion to table the application; Mr. Rourke seconded and the application was tabled unanimously, 4-0.

### **ZBA2014-41, Parsons Area Variance, 742 Route 9P**

Chairman Ritter recognized Mr. Dan Parsons who presented his proposal to build on a currently vacant lot for which he has a purchase contract, contingent upon approval of a side yard and area variance. Mr. Parsons stated that the parcel in question is actually 724 Route 9P and not 742 Route 9P as listed in the Public Hearing notice. Chairman Ritter asked the Board if they had any questions prior to opening the public portion of the Public Hearing. They did not and Chairman Ritter proceeded to open the public portion of the hearing.

Mr. Jesse Schwartz, attorney on behalf of Mr. Joe Riley of 1 Keel Lane, spoke in opposition to the proposal. He expressed concern for the placement of the building and why a variance was required, since there was sufficient land to build. He stated that since there is only a purchase agreement, the need for the variance would be self-created. Mr. Schwartz also addressed the deficiency of the Public Hearing notice, citing the wrong address and not listing the current owners of the property.

Chairman Ritter asked if anyone else wished to provide comment. There was no further public comment and Chairman Ritter tabled the public portion of the public hearing. Chairman Ritter asked the Board if they had any additional questions or concerns. Mr. Cutler acknowledged the need for two variances and indicated that the Area Variance could be construed as self-created. Mr. Cutler stated that the Public Hearing Notice would have to be re-published with the correct address. There was additional discussion regarding the reasoning for the setback. Mr. Parsons indicated the view of the lake was a consideration but that they could work with a 10 foot setback. Chairman Ritter initiated a discussion regarding investigating the purchase of additional property from the church and other issues concerning the requested 3 foot setback.

Chairman Ritter asked the Board if they had any additional concerns at this time. There were none so he asked for a motion to table the application to re-publish the correct Public Hearing Notice. Mr. D'Ambro made a motion to table the application and Mrs. Kipling seconded. The motion to table the application was approved unanimously, 4-0.

### **Other Discussion:**

Chairman Ritter asked if there was any other outstanding issues or concerns and there were none.

### **Adjournment:**

A motion to adjourn was made by Mr. Rourke, seconded by Mrs. Kipling at 9:15 P.M.

**The next Zoning Board of Appeals Meeting will be October 14, 2014.**

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