

**TOWN OF STILLWATER
ZONING BOARD OF APPEALS
October 28, 2013 @ 7:30 PM
STILLWATER TOWN HALL**

Present: Chairman James R. Ferris
Vice Chairman Donald D'Ambro
William Ritter
Richard Rourke

Also Present: Daryl Cutler, Attorney for the Town
Paul Cummings, The Chazen Companies
Ray Abbey, Code Enforcement Officer
Paul Male, Acting Director of Building and Planning
Deborah Osborn, Secretary

Absent: Christine Kipling
Lindsay Zepko, Town Planner

Chairman Ferris called the meeting to order at 7:30 P.M.

Review and Approval of Minutes of Zoning Board of Appeals:

Chairman Ferris stated that the first order of business is the adoption of minutes from the September 23, 2013 meeting. Mr. Ritter made a motion to approve the meeting minutes, seconded by Mr. Rourke; Mr. D'Ambro abstained, motion carried 3-0-1.

Public Hearings/New Business:

ZBA2013-23 Area Variance, 2 Grace Moore Road, Alec Mackay

Chairman Ferris acknowledged Mr. Alec Mackay and briefly summarized what Mr. Mackay was seeking from the Board in terms of a variance. Mr. Mackay proceeded to describe his proposal requiring an Area Variance and summarized the history of the variance that had been previously granted in 2008, but has since expired. Mr. Mackay stated that he had not moved forward on his plan to construct a duplex at that time due to the economic conditions and other factors. Mr. Mackay described the parcel as being located on the east corner of Grace Moore Road and County Road 76. He stated that the variance was needed because the parcel is 1.6 acres and he understood that 2 acres per unit is required. Mr. Mackay further explained that placement of the proposed duplex will conform to all setback requirements. He stated that he does not have the ability to achieve conformance with the 4 acre requirement and that his proposal will not create an adverse impact, nor was it self-created.

Chairman Ferris opened the public portion of the Public Hearing and asked if anyone would like to comment on the proposal. There was no public comment and Chairman Ferris closed the public portion of the hearing. Chairman Ferris asked if the Board had any further concerns for the application before them. Vice Chairman D'Ambro asked if the previous proposal was also for a duplex and Mr. Mackay stated that it was. Mr. Rourke asked about the availability of utilities and Mr. Mackay indicated that there were none at this time, indicating that the power had been previously dis-connected. There were no further concerns and Chairman Ferris moved to SEQRA review. On a motion by Mr. Ritter, indicating that no further action was required and seconded by Vice Chairman D'Ambro, the SEQRA was approved 4-0.

**TOWN OF STILLWATER
ZONING BOARD OF APPEALS
2013 RESOLUTION NO. 2**

WHEREAS, Alexander Mackay has submitted an application to the Zoning Board of Appeals for an Area Variance regarding property located on 2 Grace Moore Road, more fully identified as Tax Map Number 231-1-33; 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;

Now, therefore, be it

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

A motion by Member Ritter, seconded by Member D'Ambro, to adopt Resolution No. 2 of 2013.

A roll call vote was taken on Resolution No. 2 of 2013 as follows:

Member Christine Kipling	Absent
Member William Ritter	Yes
Member Donald D'Ambro	Yes
Member Richard Rourke	Yes
Chairman James Ferris	Yes

Resolution No. 2 of 2013 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on October 28, 2013.

Chairman Ferris asked for a motion to approve the application. Mr. Ritter made the motion and Mr. D'Ambro seconded; motion carried 4-0.

**TOWN OF STILLWATER
ZONING BOARD OF APPEALS
2013 RESOLUTION NO. 3**

WHEREAS, Alexander Mackay has submitted an application to the Zoning Board of Appeals seeking an Area Variance in order to build a duplex on property located at 2 Grace Moore Road, Stillwater, more fully identified as Tax Map Number 231-1-33; and

WHEREAS, the Applicant is seeking an area 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 October 28, 2013; 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 there are two duplexes in the area and businesses;
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 applicant cannot purchase more land as the neighbor will not sell any;
3. The requested Area Variance is not substantial because the lot is only 1.66 acres, however, the proposed building is consistent with the neighborhood and uses;
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 proposed building is consistent with the neighborhood; and
5. The alleged difficulty was not self-created because duplexes are allowed in the district, but the lot size requirement of the Zoning Code changed after the lot was created. Additionally, this variance was approved before and there was no public comment or objections to it during the public hearing; and be it further

RESOLVED, that the application of Alexander Mackay for an are variance to allow for the construction of a duplex on property located at 2 Grace Moore Road, Stillwater, more fully identified as Tax Map Number 231-1-33, is GRANTED.

A motion by Member Ritter seconded by Member D'Ambro, to adopt Resolution No. 3. of 2013.

A roll call vote was taken on Resolution No. 3 of 2013 as follows:

Member Christine Kipling	Absent
Member William Ritter	Yes
Member Donald D'Ambro	Yes
Member Richard Rourke	Yes
Chairman James Ferris	Yes

Resolution No. 3 of 2013 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on October 28, 2013.

ZBA2013-24 Area Variance-576 Route 9P, Chris Van Pelt

Chairman Ferris acknowledged Mr. Van Pelt who proceeded to describe his proposal before the Board requiring an Area Variance to construct a 14 feet x 18 feet single story addition over an existing concrete block patio. Chairman Ferris indicated that the proposed site appears to not be totally within the property line, as notated on the map. Chairman Ferris stated that for the Board to consider approving the addition, this would be an issue. Mr. Van Pelt stated that the addition would be within his property line. With no further discussion, Chairman Ferris opened the public portion of the Public Hearing.

Mr. John Vanhorn of 573 Route 9P expressed concerns for the proposal and what he saw as existing encroachments over the property line; ie, the driveway and fence. He also stated that the current retaining wall creates a 20 foot drop off, which cannot be backfilled. He stated that current building codes would not allow for this today. Mr. Vanhorn asked that before any additional construction take place, that his side of the property be "cleaned up".

Chairman Ferris noted the concerns for the south side of the property and asked if anyone else would like to speak.

Mr. Male reviewed his concerns for the proposal, noting that there appear to be inconsistencies in the numbers. He recommended denying this variance request as presently submitted, as he indicated that the plans clearly showed continuing the encroachment to the north. Additionally, Mr. Male stated that the maximum lot coverage is 11.6% greater than that allowed by the Stillwater Zoning Code.

Mr. Male presented a memo describing his concerns for the proposal as follows:

1. According to the survey map, the existing block patio already encroaches onto the neighbor to the north by 1.7 +/- feet. In addition, there are two other encroachments, one to the south of 0.8 +/- feet and a wooden retaining wall located on the right-of way of NYS Route 9P.
2. It appears that the entire 60 foot frontage is paved with an additional encroachment on the property to the north. The width of the asphalt pavement as it meets the edge of pavement along NYS Route 9P is 70 feet, for a lot with a width of 60 feet.
3. In the RRD district, the minimum side setback is 10 feet. The existing side setbacks to the existing house (excluding the patio) are 8.0 +/- feet and 12.9 +/- feet, currently in violation of the Town of Stillwater Zoning Code.
4. In the RRD district, the maximum lot coverage is 40%. This lot has an area of 6,000 square feet or an allowable 2400 square feet of coverage. The area of all existing impervious surfaces, as scaled from the survey plat, equal 3098.5 square feet or 51.6%, or 11.6% more than that allowed for this lot.
5. The proposed plans call for an addition of 14.0 feet from the house corner, showing a distance of 13.9 feet to the property line. The survey plat shows 12.9 feet to the property line. In either case, the proposed 14.0 foot addition does not fit on the Applicant's property.
6. How will the Applicant physically build this addition to his house without further encroaching on his neighbor's property?
7. How will be maintaining this backyard with no route to his backyard without encroaching on either the neighbor to the north or to the south. It appears that the Applicant cannot maintain his backyard currently due to the encroachments on the two sides.

Chairman Ferris, before proceeding to discuss Mr. Male's concerns, asked if there was any additional public comment regarding this proposal. Mr. Dave Anderson of 578 Route 9P stated that he was in favor of the addition, indicating that it would be on the existing footprint, and that it would not, fundamentally, be bigger. He said that there is currently no access to the back, so this shouldn't be an issue.

Chairman Ferris asked if anyone else from the public would like to speak regarding this proposal. There was no further public comment.

Mr. Cutler expressed his opinion that this plan could not be approved by this Board when there is an encroachment. Chairman Ferris asked if there was any attempt made to rectify this situation another way, such as seeking to purchase additional land on the north and south. Mr. Van Pelt stated that they were not selling to the North and that he had not asked his neighbor to the South.

Mr. Cummings stated that the roofline also has to be considered, indicating that any variance granted stays with the land and that, in the future, neighbors may not be so amenable. Further discussion included the "0" setback and the accuracy of the map.

Chairman Ferris stated that what he feels Mr. Cutler is saying is that for this Board to approve this proposal, the encroachments have to be taken care of. Mr. Cutler stated that in his legal opinion, this Board has no ability to grant this variance.

Chairman Ferris summarized for Mr. Van Pelt what he felt were his options. He stated that the Board could vote, and if negative, he could come back with another application. Chairman Ferris stated that a second option would be to table this application to allow for Mr. Van Pelt to make adjustments. Mr. Cummings stated that if the application was tabled, it would allow the applicant to provide further information. Mr. Cutler also indicated that by tabling the application, there would be no need for another public hearing. Mr. Van Pelt asked what amount of time would be available to make adjustments. Chairman Ferris indicated that 6 months could be reasonable but that if in 5 ½ months, he needed more time, he could ask for an extension. Mr. D'Ambro made a motion to table the application for up to six months and Mr. Ritter seconded. All were in favor to table, 4-0.

Review/Comment from Building & Planning:

Chairman Ferris acknowledged Mr. Abbey for the Building Permit Status Report he had provided to the Board and thanked him.

Other Discussion:

Chairman Ferris asked the Board members if there was anything outstanding to discuss prior to adjournment. He acknowledged the memo from Ms. Zepko which outlined a draft meeting schedule for 2014. Chairman Ferris noted no issues with the schedule but that moving the meeting from 7:30PM to 7:00PM might be an issue for some members.

Adjournment:

A motion to adjourn was made by Mr. Rourke, seconded by Mr. Ritter, at approximately 8:45 P.M.

The next Zoning Board of Appeals Meeting will be November 25, 2013.