

WILTON ZONING BOARD OF APPEALS
THURSDAY July 25, 2013

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, July 25, 2013, at the Wilton Town Hall, 22 Traver Road, Wilton, New York and was called to order by Chairman Joseph O'Brien at 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Joseph O'Brien, Rocco Angerami, Robert Barrett, Dean Kolligian, Christopher Ramsdill and James DeLoria. Also present were Mark Schachner, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Tony McCracken.

MINUTES: The minutes of the last meeting, held on June 27, 2013, were approved, as submitted, on a motion made by Mr. Angerami seconded by Mr. Kolligian. All board members were in favor.

CORRESPONDENCE: None other than those relating to current applications before the board.

RENEWALS:

APPEAL NO. 03-29 Wendy Zwijacz, 19 Strong Road, Gansevoort, New York 12831. Request for the renewal of a Special Permit, pursuant to Section 129-26 (G) and 129-176 (V) of the Zoning Ordinance, for the keeping of agricultural animals. Permit originally granted on July 24, 2003, amended on October 28, 2004 (Appeal No. 04-45), and renewed several times; property located at 19 Strong Road, Tax Map No. 102.-1-35.2, zoned R-2, in the Town of Wilton.

Chairman O'Brien noted the applicant was not present. The appeal will be tabled until the next meeting.

Christopher Ramsdill made a motion to table Appeal No 03-29. James Deloria seconded the motion. Mr. Ramsdill, Mr. Kolligian, Mr. Angerami, Mr. Barrett, Mr. Deloria and Chairman O'Brien were all in favor. The motion passed 6-0.

APPEAL NO. 95-23 Ralph and Patricia Benincasa, 69 Edie Road, Saratoga Springs, New York 12866. Request for the renewal of a Special Permit, pursuant to 129-26 (B) of the Zoning Ordinance, for the boarding of horses. Permit was originally granted on July 27, 1995 and has been renewed every two years. Property located at 69 Edie Road, Tax Map No. 154.-1-12.121, zoned R-2, in the Town of Wilton.

Ralph Benincasa appeared before the board.

Chairman O'Brien asked Mr. Benincasa if he wanted the special permit renewed. Mr. Benincasa said he would. Chairman O'Brien asked if there have been any changes. Mr. Benincasa said there have been none. Chairman O'Brien asked if there have been complaints. Mr. Mykins said there were none.

Christopher Ramsdill made a motion that Appeal No. 95-23, the request for the renewal of the special permit for the boarding of horses, be granted for two years and will be subject to any conditions originally placed upon it. Robert Barrett seconded the motion. Mr. Ramsdill, Mr. Kolligian, Mr. Angerami, Mr. Barrett, Mr. Mr. Deloria and Chairman O'Brien were all in favor. The motion passed 6-0. Appeal subject to review and renewal on or before July 27, 2015.

OLD BUSINESS:

APPEAL NO. 13-12 Altamont Park Apts., Inc., David Canfield, P.O. Box 5107, Clifton Park, New York 12065 for the property located at Margaret Drive, Gansevoort, New York 12831. Request for Area Variances pursuant to Schedule A, R-1 Residential of the Zoning Ordinance for a proposed 2-lot subdivision; at above said property, Tax Map No. 128.5-1-12, zoned R-1, in the Town of Wilton.

Chairman O'Brien asked for any new information. The clerk noted none was submitted

John Allen, from Whiteman, Osterman and Hanna, LLP appeared before the board representing the applicant and Altamont Park Apts. Also present was David Canfield. We were here in March of this year. As we started to make our presentation based on the document provided by Mr. Mykins it became clear that there was some miscommunication between his office and our office. Mr. Angerami pointed out correctly that in addition to the variance required, because the proposed lot-2 in addition is technically a corner lot. It also does not comply with the footnote in the table that says that a corner lot needs to be thirty thousand square feet. Our presentation stopped fairly abruptly, and went back to the planning board to get the positive recommendation for the second time. We came back and there was a situation where there were only four board members present. We are back here again; glad to see virtually all the board members are

here. What we are looking to do is to develop an area that was shown as a green area on the original subdivision of Green Acres into two single family homes. Each will be in excess of the twenty thousand square foot requirement, applicable to lots that aren't corner lots. The lot width, depth, side yard, and all other requirements are met. We need two variances which are unique to this lot when this was laid out. We have no reason why Mr., Matfield set this up back in the seventies. He chose to configure this lot, which is shown here lot 19 exactly as he had, then he pushed it this way (indicating) and left a strip here we wouldn't have a corner lot, we wouldn't even be here.

Mr. Allen noted before Mr. Canfield built on lot 18 this board granted him a variance because it too was a corner lot, and does not have one hundred and fifty feet of frontage on both strips. In fact every corner lot in the subdivision that is to be built upon, lots 1, 2, and 3, do not comply with either of the requirements of which we are seeking variances. None of the lots have thirty thousand square feet; none of them have one hundred and fifty feet of frontage on both roads. Given the character of the neighborhood, the plan was to build single family houses. Four are already built in the neighborhood and all of the side yard set backs are complying. Nothing will be closer to one of the existing residences than it is entitled to as of right. We believe strongly that the character of the neighborhood would not be adversely affected in the detriment to property values or anything else as a result. It's a very consistent use of the property with what's already there. We would be appreciative of the variances, so we may go back to the planning board and get the 2-Lot subdivision approved. He said he would be happy to answer any questions.

Chairman O'Brien also noted the Wilton Planning Board submitted a memo dated April 22, 2013. *"Please be advised that the Wilton Planning Board reviewed the above-referenced application by Altamont Park Apartments Inc. for an Area Variance at its meeting held on April 17, 2013, and the following action was taken: David Gabay moved for a positive recommendation to the ZBA regarding the applicant's request for an area variance for relief of 8404 square feet pursuant to Schedule A, R-1, Residential District, for a proposed two-lot subdivision in Green Acres Subdivision. Sue Peterson seconded the motion which passed with all board members in favor."*

Mr. Allen stated the applicant was before the planning board twice. We went once on the one hundred and fifty foot frontage issue, and that was unanimously recommended positive to this board. Then we ran into a glitch, which Mr. Angerami pointed out. So we went back to the planning board in April and then again making a recommendation on the additional area variance.

Chairman O'Brien asked if there were any questions. Mr. Angerami said he wanted to make the clarification that it was Mr. Worth that pointed out that this was a non-conforming lot. Mr. Allen apologized and noted it was a valid comment. Chairman O'Brien asked if there were any further question or comments.

Christopher Ramsdill made a motion that Appeal No. 13-12, the requests for a 100' frontage variance and an 8,404 square foot lot size variance for a proposed two-lot subdivision amendment, be granted for the following reasons: 1. The applicant has demonstrated that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variances because the unique layout of the property was designed in an awkward configuration and doesn't traditionally meet what is considered a corner lot. The character of the proposed buildings is consistent with the existing neighborhood. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by area variances because of the unique layout of the piece of property. 3. The applicant has demonstrated that the requested area variances are not substantial because of the way the property was configured and doesn't truly meet what is viewed as a corner lot, in a traditional sense due to the long narrow section of the parcel on Margaret Drive. 4. The applicant has demonstrated that the requested area variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because the homes to be constructed will be consistent with the neighborhood. 5. The applicant has demonstrated that the alleged difficulty was not self-created as the property was configured this way when the subdivision was approved. Mr. Angerami seconded the motion. All board members were in favor. The motion passed 6-0.

APPEAL NO. 03-29 Wendy Zwijacz, 19 Strong Road, Gansevoort, New York 12831. Request for the renewal of a Special Permit, pursuant to Section 129-26 (G) and 129-176 (V) of the Zoning Ordinance, for the keeping of agricultural animals. Permit originally granted on July 24, 2003, amended on October 28, 2004 (Appeal No. 04-45), and renewed several times; property located at 19 Strong Road, Tax Map No. 102.-1-35.2, zoned R-2, in the Town of Wilton.

Chairman O'Brien noted the applicant arrived for the renewal of the appeal.

Chairman O'Brien asked Ms. Zwijacz if she would like to renew the appeal. Ms. Zwijacz said she would. Chairman O'Brien asked Mr. Mykins if there have been any concerns or complaints. Mr. Mykins said there have been none.

Mr. DeLoria made a motion to renew special permit Appeal No. 03-29 for an additional period of two years; property located 19 Strong Road Tax Map No.

102.-1-35.2. Mr. Kolligian seconded the motion. Mr. Barrett, Mr. Kolligian, Mr. Angerami, Mr. Deloria, Mr. Ramsdill and Chairman O' Brien approved. The motion passed 6-0.

APPEAL NO. 13-22 Jeffrey Lindahl, 16 Gailor Road, Gansevoort, NY 12831. Request for an Area Variance pursuant to Schedule A for construction of 12' x 20' pre-built detached garage; property located at 16 Gailor Road, Tax Map No. 128.5-3-26, zoned R-1 in the Town of Wilton.

Mr. Lindahl said he appeared before the board last month and wasn't sure how many board members had a chance to drive by the site and look at the grade. It will be costly to place the garage further back and he said it didn't look right because it's almost a five foot grade. If a retaining wall is built, the trunk of the tree is in the way. He said he was asking to place the garage twenty eight feet back from the pavement. He said the board also asked if there were any more detached garages in the neighborhood. He said he couldn't think of one at the time but there is a detached garage on Damascus Drive.

Mr. Lindahl said he was requesting to place the garage twenty eight feet from the pavement (edge of the road). The garage doesn't come into view driving if you are travelling west on Gailor Road. Mr. Angerami asked how far back the house is. Mr. Lindahl said the house is fifty five feet 1 inch. Mr. Ramsdill asked what the setback is from the actual property line not the edge of the road. Mr. Mykins stated the property line is fifteen feet from the center of the road. Mr. Mykins said if the garage is at twenty eight feet then its only thirteen feet. Mr. Lindahl said that is what he is asking for. Chairman O'Brien noted the request is for thirty four point ninety two feet. Mr. Lindahl agreed. Chairman O'Brien said the members were concerned about the location and aesthetics of the garage. Mr. Lindahl responded and said he didn't feel that it's going to impact the neighborhood. Mrs. Lindahl said it's going to be on the wooded side of the property. Mr. Lindahl said he owns a good portion of the woods. There will never be a house next door since the lot cannot be built on.

Mr. DeLoria asked about the picture of the garage. Mr. Lindahl stated that it is a garage around the corner from him and the door is set at an angle. Mr. Kolligian asked if anyone knew the exact address of the property. Mr. Lindahl said he didn't. Mr. Mykins said he needed an exact address because he didn't even know if it was permitted. Mr. Kolligian said that was his next question; what is the address and did they need a variance. Mr. Angerami said it looks as though the structure is on a foundation, Mr. Lindahl said it is. Mr. Angerami asked Mr. Lindahl if his garage will be on a foundation. Mr. Lindahl said no. Mr. Angerami said he looked at the property and it's very well kept, nice. Mr. Lindahl said he isn't going to put something there that's going to make my property look bad, or

anybody's around me. He said he wouldn't do something to down grade his property.

Mr. Kolligian asked if there were any correspondence from neighbors or anything here. Mr. Lindahl said he spoke to his neighbor and he and he has no problem with it. There was an email from the prior owner and Mr. Lindahl said he showed it to the new owner. Mr. Mykins said he will need a copy of that email. Mrs. Lindahl said there should a copy from the last meeting. Chairman O'Brien said there was one here. Mr. Mykins said he didn't see one in the packet. Attorney Schachner said it was definitely mentioned last time. Chairman O'Brien said he thought there was one neighbor that wasn't in favor of the garage. Mr. Mykins said there was. Mr. Lindahl said it was the neighbor that moved. Attorney Schachner asked if it was David Berglin. Mr. Lindahl said Mr. Berglin is the former owner. Attorney Schachner asked if it is the same property. Mr. Lindahl said that was correct, it is the same property. Attorney Schachner said the email that was mentioned is from the successor to Mr. Berglin on the same property. Mrs. Lindahl said that was correct. Attorney Schachner asked if the email exists. Mr. Lindahl said he may have erased it but said he can get a letter from him. Mr. Angerami asked if the new neighbor was living in the house before when the notices went out. Mr. Lindahl said he notified the new owner and he had no problem with the garage. Chairman O'Brien asked if the new homeowner saw the location of the proposed garage. Mr. Lindahl said he showed him the plan. Attorney Schachner said if the board is heading toward possible approval, none of us are sure that we physically have seen, we certainly have discussed or heard discussion about this, I would suggest if it's important to this board what this neighbor thinks that be a condition of the approval. Those are ifs and that is entirely up to the board and not anyone else. The board can make that a condition of the approval delivery of a consent letter from this neighbor. Mr. Lindahl said he had no problem with that. Mr. Angerami said the board can give him approval, with that as a condition, if we choose to do so. Attorney Schachner said we have heard that representation but first of all we need it in our record anyway and secondly, no discrediting to anybody, we don't physically have it. Mr. DeLoria said they discussed the pros and cons of moving it back. The applicant stated it was a lot more expensive. He said he would feel more comfortable if he knew what the difference in price was. How much more expensive is it to put it back there? Mr. Lindahl said with a retaining wall to build one and the fill, probably between four and five thousand dollars, to put that there on top of the cost of the garage. He said he didn't want to put it there because it's not going to look right. He said the proposed location will look right. Chairman O'Brien said some of these members were concerned with the location. Mr. Lindahl said he wouldn't put it there if it didn't look right. Mr. Ramsdill said he visited the property and could see the drop off and that the woods are pretty dense as well. The applicant would be like running right into the woods with the retaining wall. He said he did see that would be a concern to try

to have a retaining wall up in the middle of the woods. Mr. Ramsdill said he thought about the access to the back yard and if it would be restricted on that side. Although at the same time, pushing it forward creates other issues. There is a pretty substantial drop off, and it does get thickly wooded where the proposed garage location would be. Mr. Angerami said after looking at the property and the style of the garage, it would probably look better the way the applicant wants it.

Chairman O'Brien asked Mr. DeLoria if his question was addressed. Mr. DeLoria said it was but it was a caveat as far as what the neighbors think, maybe that would have to be validated. He said he drove around the neighborhood and is concerned it isn't consistent with the neighborhood. He said he understood the location from the construction stand point but didn't see anything else quite like that going on in the neighborhood. Mr. Lindahl's property is very well kept. Mr. Lindahl said there's a detached two car garage on Sunshine Drive. Mr. Angerami asked if it was close to the road. Mr. Lindahl said no, it's probably even with the house, there's no drop off but it is a detached garage in that neighborhood. Mr. Angerami asked if the appeal can be approved contingent upon a no cut area where the trees are on that portion that is his land. If the house is sold next year and someone clears the trees, the garage is going to stick out like a sore thumb. Attorney Schachner said that would be a very appropriate condition. Mr. Angerami said the trees are what make the site doable. Last month, he said he was against it because he couldn't really see the grade. The grade would have to be carried all the way to the back of the house. I think it would look nicer the way the applicant is planning it than the way he said he thought about it last month. It would be terrible if somebody came in and decided to clear all those trees. If the board could make a no cut buffer area part of the approval would it run with the land? Attorney Schachner stated the variance runs with the land, and any conditions attached to the variance run with the variance.

Chairman O'Brien asked if there were any other questions or concerns. There were none.

Christopher Ramsdill made a motion that Appeal No. 13-22, the request for a 34.92' front yard variance for a proposed 12' X 20' garage be granted for the following reasons: 1. The applicant has demonstrated that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variance because of the grade of the property and the location of some mature trees that will not be removed. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by area variance because the layout of the property forces that garage to be built in an area closer to the road. 3. The applicant has demonstrated that the requested area variance is not substantial because it is

the minimum amount necessary to construct the garage in the location that aesthetically makes sense. 4. The applicant has demonstrated that the requested area variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because the proposed location is the most aesthetically pleasing place to construct the garage. 5. The applicant has demonstrated that the alleged difficulty was self-created. Approval of appeal is conditioned upon the following; 1. Receipt of an email or letter from new homeowners at 18 Gailor Road supporting approval for the variance. 2. The mature trees between the detached garage and the side property line shall not be removed and will remain a no-cut buffer area. Mr. Angerami seconded the motion. All board members were in favor except Mr. Barrett, who was opposed. The motion passed 5-1.

APPEAL NO. 13-23 New Horizon Church, Inc. (Edward Kane – Trustee), 150 Perry Road, Saratoga Springs, NY 12866. Request for an area variance pursuant to §129-187 B 12, R-2 Residential District for an area variance for front setback relief of 22.75ft. for replacement of an existing free standing sign with a new freestanding sign; at above said address. Tax Map No. 153.-3-91, zoned R-2 in the Town of Wilton.

APPEAL NO. 13-24 New Horizon Church, Inc. (Edward Kane – Trustee), 150 Perry Road, Saratoga Springs, NY 12866. Request for a special permit pursuant to §129-188 B 12, R-2 Residential District for a replacement of an existing free standing sign with a new freestanding sign; property located at 150 Perry Road, Tax Map No. 153.-3-91, zoned R-2 in the Town of Wilton.

Chairman O'Brien noted a letter was received from William Kilpatrick of New Horizon Church, dated July 19, 2013; *Mr. Mykins, On behalf of the New Horizon Church. I would like to thank you and the entire Town of Wilton Board for the considering our request for a variance concerning the placement of a new church sign. However, we would like to remove the application we submitted. We have decided not to pursue the placement and construction of a new sign at this time. We appreciate all the help that each of you have provided. Look forward to working with you all again if the need arises. Sincerely, William Kilpatrick, Pastor.*

APPEAL NO. 13-26 Rucinski Hall Architecture, 627 Maple Ave, Saratoga Springs, NY 12866. Request for an area variance pursuant to Schedule A, R-1 Residential District to convert a single family dwelling into a two-family dwelling for a proposed two-family dwelling and garage; at above said address. Tax Map No. 127.12-1-14, zoned R-1 in the Town of Wilton.

APPEAL NO. 13-27 Rucinski Hall Architecture, 627 Maple Ave, Saratoga Springs, NY 12866. Request for a special permit to §129-176 P, R-1 Residential District to convert a single family dwelling into a two-family dwelling and garage;

at above said address. Tax Map No. 127.12-1-14, zoned R-1 in the Town of Wilton.

Chairman O'Brien said there was a letter from the applicant dated July 22, 2013. *"Mark, Please table the Murawski residence for the July meeting of the Wilton Town Board as we are working on modifications to the plans. Regards, Ethan T. Hall architect."*

Dean Kolligian made a motion to table Appeal No. 13-26 and 13-27 until August 22, 2013. Robert Barrett seconded the motion. All board members were in favor. The motion passed 6-0

Christopher Ramsdill made a motion to adjourn the meeting at 7:34 p.m. Dean Kolligian seconded the motion. All board members were in favor. The motion passed.

Dated: _____

Amy DiLeone
Zoning Clerk