

WILTON ZONING BOARD OF APPEALS
THURSDAY, May 24, 2018

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, May 24, 2018 at the Wilton Town Hall, 22 Traver Road, Wilton, New York and was called to order by Chairman O'Brien at 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman O'Brien, Christopher Ramsdill, Dean Kolligian, Robert Barrett, Gerard Zabala, and Charles Foehser. Also present were Justin Grassi, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Scott Kingsley and James Deloria

MINUTES: The minutes of the last meeting, held on April 26, 2018 were approved, as submitted, on a motion made by Mr. Barrett 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. 12-22 Mario Maresca, 124 Edie Road, Saratoga Springs, New York 12866. Request for the renewal of a Special Permit, pursuant to Section 129-176 (V) of the Zoning Ordinance for the keeping of chickens; property located at 124 Edie Road, Tax Map No. 141.-2-82, zoned R-2, in the Town of Wilton. Special Permit originally granted on May 24, 2012 for a period of two years, is due for review and renewal.

No one was present to represent the applicant. The Appeal No. 12-22 was moved to the end of the meeting.

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APPEAL NO. 2017-11 Marissa Mackay, 25 Ernst Road, Gansevoort, New York 12831. Request for the renewal of a Special Permit, pursuant to Section 129-176 (V) of the Zoning Ordinance for an agricultural use with animals conditioned upon 6-12 chickens and 2 alpacas or 2 pygmy goats with a maximum of 13 animals; property located on 25 Ernst Road, Tax Map No. 114.-2-5.2, zoned R-2 in the Town of Wilton. Permit originally granted on April 27, 2017 for a period of one year, is due for review and renewal.

No one was present to represent the applicant. The Appeal No. 2017-11 was moved to the end of the meeting.

NEW BUSINESS:

APPEAL NO. 2018-06 Theresa A. Capozzola, Attorney, 502 Route 9, Saratoga Springs, NY 12866. Request for an Area Variance pursuant to 129-181 D., (2), (b) of the Zoning Ordinance; property located on 502 Route 9, Saratoga Springs, NY 12866, Tax Map No. 153.13-1-2, zoned CR-1, in the Town of Wilton.

Chairman O'Brien read a letter from Saratoga County Planning Board dated May 20, 2018, stating "Decision: No Significant County Wide or Inter Community Impact. Comment: While there appears to be no significant county or intermunicipal impact presented by the proposed setback request, and while we understand the physical impediment to proper placement (at 30' from the ROW/property line), we do recommend (as we have in past referrals related to signage placement) that the proposed sign be placed minimally at 1-2 ft. off the state ROW/private property line with a 28 or 29-foot variance so that the sign in and of itself does not become a future issue involving liability related to safe placement. Sincerely, Michael Valentine, Senior Planner."

Ms. Capozzola addressed the Board to discuss the signage placement. She said that she took pictures of some of the signs in the neighborhood. She showed a picture of Met Life which she said was a few buildings down the street from her. She stated that sign wasn't three feet back from the road. She said there were other signs that she believed were in the right of way: Nancy Sutton's sign, Peter Gailor's sign, and Saratoga Bridges' sign. She said that she was asking to be on the line so that she is not on the highway right of way. She stated that if she had to move a foot in that wouldn't be a problem either but she wouldn't want to get too far back because no one would be able to see the sign due to the slope.

Mr. Ramsdill asked if the property line was right on the crest of the slope. Ms. Capozzola showed with a picture where the property line is located. Ms. Capozzola said that the property flattens out. Mr. Ramsdill, referring to a picture, asked if Ms. Capozzola was standing on the 30 feet setback line. She said that it was exactly the line. She said that if you go back from there, the perception is that you are in the middle of the yard versus anywhere near the road.

Mr. Zabala asked Ms. Capozzola if she looked to see that the sign would be visible in that location while driving south on Route 9. He stated that he took a drive down there and he

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wasn't sure, with everything blooming, if the sign would be visible until you are right on top of it. He said that some of the shrubbery and trees were probably on her property.

Ms. Capozzola said that she wasn't planning to cut anything back. She said that maybe coming south it might not be as visible and maybe she could clip back some of the shrubs. Mr. Zabala said he was just inquiring about it. Ms. Capozzola said she was trying to do the minimum request. Mr. Zabala said that he was just asking the question but she could do what she wanted to do with the property.

Mr. Barrett asked if it would make a big difference if Ms. Capozzola moved the sign back a foot like the County recommended. Ms. Capozzola said if that was what the Board wanted, she doesn't think it is a big deal. Ms. Capozzola stated when she was driving to the meeting, clearly other people thought their signs needed to be within the right of way to be visible.

Mr. Ramsdill asked Mr. Mykins if these other signs pre-dated zoning. Mr. Mykins said most of them. He said Peter Gailor's sign isn't but that is a whole other issue. Ms. Capozzola said that Saratoga Bridges is a fairly new building and the sign seems pretty close to the road. Mr. Mykins said that the sign is actually about 10 feet off the right of way. He said Galarneau's sign is about 15 feet off the right of way. Mr. Ramsdill said that the shoulder varies. Mr. Mykins said that Dave Gabay's sign is 10 feet off the property line. Ms. Capozzola said that maybe the shoulder is wider because the appearance looks like it is right on the road. She said that she didn't think a foot would matter too much but she would hesitate to go beyond that because the value of the sign would disappear.

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

Mr. Ramsdill made a motion on Appeal No. 2018-06 for Theresa Capozzola, Attorney, 502 Route 9, Saratoga Springs, NY 12866. Request for an Area Variance pursuant to 129-181 D., (2), (b) of the Zoning Ordinance; property located on 502 Route 9, Saratoga Springs, NY 12866, Tax Map No. 153.13-1-2, zoned CR-1, in the Town of Wilton be granted in the relief amount of 28.0 feet, because the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community, 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 it is very consistent with the other signs that are in the vicinity and for a large distance in both directions. It fits in with the zone and the slope on the property also make it unobtrusive to the main road.
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 home pre-exists zoning. It is set too close to the road to comply with the requirements because of the unusually steep slope. In that area, it would be difficult to see the sign if it was set back.

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3. The applicant has demonstrated that the requested Area Variance is not substantial because it is consistent with other signs. It would be impossible to see if it was any further back.
4. The applicant has demonstrated that the requested Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because it is consistent with other signs in that area and, because of the significant increase to the road, it won't be very obtrusive to traffic along the road.
5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Kolligian seconded the motion. Mr. Ramsdill, Mr. Kolligian, Mr. Foehser, Mr. Barrett, Mr. Zabala, and Chairman O'Brien were in favor. The motion passed.

APPEAL NO. 2018-07 Bert Rawert, 15 Palmer Terrace, Gansevoort, NY 12831. Request for an Area Variance pursuant to 129-157 Projections into required yards of the Zoning Ordinance; property located on 15 Palmer Terrace, Gansevoort, NY 12831, Tax Map No. 127.15-1-7, zoned R-1, in the Town of Wilton.

Chairman O'Brien read a favorable letter from the applicant's neighbor.

Mr. Rawert said that he has an above ground pool. He would like to have a deck around the pool to be easier to access. He said the deck would be 11 feet x 18 feet with part swept out as it will wrap around the pool. He said he would be 15 feet from the side property line. He will be 26 feet from the rear property line and this rear property line is why he is applying for a variance. He asked if he should go through the five reasons he listed on the application for the appeal. Chairman O'Brien said that it wasn't necessary.

Mr. Zabala said that he went on Google Maps and that there appears to be a big buffer of vegetation and woods between the applicant and the neighbor behind him. He asked if the neighbor on the right side has any objections. Mr. Rawert said not to his knowledge. Mr. Ramsdill asked the applicant if he needed a variance on the right side of the property. Mr. Rawert said he did not; he is within the boundary. Mr. Ramsdill said that the applicant has his septic in the only place that he could have it. Mr. Ramsdill said the deck wrapped around the pool would need a variance no matter where he placed it. Mr. Rawert said that was correct.

Chairman O'Brien asked if there were any other questions. There were no further questions.

Mr. Zabala made a motion to approve Appeal No. 2018-07 for Bert Rawert, 15 Palmer Terrace, Gansevoort, New York 12831. Request for an Area Variance, pursuant to Section 129-157 of the Zoning Ordinance for a rear yard setback of 26.0 feet; property located on 15 Palmer Terrace, Gansevoort, New York 12831, Tax Map No. 127.15-1-7, zoned R-1 in the Town of Wilton, be granted because the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community, for the following reasons:

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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 other houses also have pools with deck patios in their backyards. A fence and trees will separate the pool and deck from the neighboring lots.
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 of the existing conditions: the septic field and the pool are in place. It will not impinge upon the view of the surrounding neighbors.
3. The applicant has demonstrated that the requested Area Variance is not substantial because relative to the pool, the deck is relatively small.
4. The applicant has demonstrated that the requested Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because no significant digging is needed nor will any hazardous materials be necessary.
5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Foehser seconded the motion. Mr. Zabala, Mr. Kolligian, Mr. Foehser, Mr. Barrett, Mr. Ramsdill, and Chairman O'Brien were in favor. The motion passed.

APPEAL NO. 2018-08 Michael Roohan, 8 Commerce Park Drive, Wilton, NY 12831. Request for an Area Variance pursuant to 129-157 and Schedule C R-3 Residential District of the Zoning Ordinance; property located on Hilltop Drive, Gansevoort, NY 12831, Tax Map No. 140.-3-32.2, zoned R-3, in the Town of Wilton.

Mr. Roohan said he wanted to thank Lisa and Mark for the professionalism which makes the application process very non-combative and it was greatly appreciated.

Mr. Roohan stated he has two applications, one for 2018-08 and one for 2018-09; they are both for the same relief request. He asked if the Chairman would like him to talk about both of the Appeals together. Chairman O'Brien asked Attorney Grassi if they could take care of both of these appeals at the same time. Attorney Grassi said he thought it would be appropriate if the Board deemed that both sites were so similar and the requests were so similar, then they both could be discussed generally. He recommended two separate resolutions or motions, but there is no need to duplicate the discussions, if you just want to reference that the same applies for both.

Chairman O'Brien stated that Mr. Roohan could discuss them both at the same time. Mr. Roohan said for Lot 2 [Tax Map No. 140.-3-32.2], he owns all the surrounding property except the 75 feet that is on the town road. He said that the other property [Lot 1 – Tax Map No. 140.-3-33], he owns all the property around it, except the eastern border and the northern border. He said one of the lots [Lot 2] is 13 acres and the other lot [Lot 1] is 18

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acres. He stated that the land tends to drop off a lot and the further up he is, the easier it is for him to build the houses without bringing in fill. He said he already has brought a lot of fill in. He said if he goes another 125 feet down the hill, he ends up with less of a viewscape which he considers unfortunate. He said he would also have to bring in a lot more fill to try to deal with the lower site.

Mr. Roohan said that he chose 75 feet for the backyard setback because it is the front yard setback for the zoning district. He thought it wouldn't be unreasonable to ask that for this 75.0 backyard setback because the driveway will come in to the backyard.

Chairman O'Brien asked if Mr. Roohan owns the property in the back. Mr. Roohan said he does. Mr. Zabala asked if Mr. Roohan is proposing the houses be placed so far in the back of the lot because of the view. Mr. Roohan said that was correct.

Mr. Ramsdill said that it was a straight drop off. Mr. Zabala said he saw it on Google Maps. Mr. Ramsdill said it is dangerous even when you are on the road. Mr. Zabala said so you are selling the view. Mr. Roohan said that is correct. Mr. Zabala said that is an asset.

Mr. Ramsdill said that Mr. Roohan might want to find a good place to turn around there. Mr. Zabala asked if there was a snowplow turn around proposed in Mr. Roohan's driveway. Mr. Roohan said that he hasn't gotten that far and he thinks that Mark will guide him in that area when that becomes a point of necessity. Mr. Zabala asked who will own the driveway. Mr. Roohan said that the driveway is owned by the people whose land it goes across and there will be a common maintenance agreement by anyone who uses it. Mr. Zabala said that he sees.

Mr. Zabala asked if the Town of Greenfield, which borders his property, has any concerns. Mr. Roohan said that he sent a letter to the Town and they don't seem very concerned.

Mr. Ramsdill asked for clarification on appeal 2018-08; he asked if it was the north or south lot. Mr. Roohan said it was for the south lot and it is the smaller of the two lots. He said that Appeal No. 2018-08 is Tax Map No. 140.-3-32.2 and 2018-09 is Tax Map No. 140.-3-33.

Mr. Eric Rosenberg, 16 Craw Lane, asked what the current requirement is to that zoning district. Mr. Roohan said it is 200 feet rear yard setback. Mr. Rosenberg asked Mr. Roohan if he wanted a 75 feet setback. Mr. Roohan said that was correct. Mr. Rosenberg asked why the setback is 200 feet. Chairman O'Brien said that was part of the zoning ordinance. Mr. Mykins said that it is an R-3 zone and that is the way they did the zoning ordinance for the R-3. Mr. Mykins said that he wasn't around when they did the zoning. Mr. Rosenberg said that he assumes that the intention was to keep a real country, low density feel. Chairman O'Brien said yes. Mr. Roohan said that the building envelope is a dozen acres so it is really a matter of where he places the house on the parcel rather than he wants to build the entire parcel. Mr. Mykins said that Mr. Roohan isn't further subdividing.

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Chairman O'Brien asked if there were any other questions. There were no other questions.

Mr. Ramsdill made a motion to approve Appeal No. 2018-08 for Michael Roohan, 8 Commerce Park Drive, Wilton, New York 12831. Request for an Area Variance, pursuant to Section 129-157 and Schedule C R-3 Residential District of the Zoning Ordinance; property located on Hilltop Drive, Gansevoort, New York 12831, Tax Map No. 140.-3-32.2, zoned R-3 in the Town of Wilton be granted in the amount of 125.0 feet relief from the rear property line because the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community, 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 the lot is 13 acres; it is very large and will remain rural. The steep slope in the front would make it extremely difficult to move the house to the lower portion of the property unless you wanted to destroy the character of the mountainside in that area.

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 current zoning allows for 75.0 foot front setback and a 200.0 foot rear setback; in this case, it makes more sense to move the home to the rear of the property because of the slope on the mountainside.

3. The applicant has demonstrated that the requested Area Variance is not substantial because it is a very large 13.0 acre parcel and the home will be taking up a small portion of that space.

4. The applicant has demonstrated that the requested Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because in order to build on this lot within the setbacks, it would require much more destruction to the physical environmental conditions to bring in the fill to even out the substantial slope that exists in that region.

5. The applicant has demonstrated that the alleged difficulty is not self-created because of the slope of the property.

Mr. Kolligian seconded the motion. Mr. Ramsdill, Mr. Kolligian, Mr. Barrett, Mr. Zabala, Mr. Foehser, and Chairman O'Brien were in favor. The motion passed.

APPEAL NO. 2018-09 Michael Roohan, 8 Commerce Park Drive, Wilton, NY 12831. Request for an Area Variance pursuant to 129-157 and Schedule C R-3 Residential District of the Zoning Ordinance; property located on Hilltop Drive, Gansevoort, NY 12831, Tax Map No. 140.-3-33, zoned R-3, in the Town of Wilton.

Chairman O'Brien stated that Mr. Roohan took care of the presentation with the discussion of the previous appeal.

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Mr. Ramsdill wanted to know if he could just make a few modifications to the previous motion. Attorney Grassi said that Mr. Ramsdill could state that the same reasons as set forth in the previous motion with whatever differences he'd like to add.

Mr. Ramsdill state that the difference of the acreage is 18.0 not 13.0 as in the prior motion and he'd like to have the same conditions apply with the substantial drop off in the front portion of the property.

Mr. Foehser seconded the motion. Mr. Zabala, Mr. Barrett, Mr. Kolligian, Mr. Foehser, Mr. Ramsdill, and Chairman O'Brien were in favor. The motion passed.

RENEWALS:

APPEAL NO. 2017-11 Marissa Mackay, 25 Ernst Road, Gansevoort, New York 12831. Request for the renewal of a Special Permit, pursuant to Section 129-176 (V) of the Zoning Ordinance for an agricultural use with animals conditioned upon 6-12 chickens and 2 alpacas or 2 pygmy goats with a maximum of 13 animals; property located on 25 Ernst Road, Tax Map No. 114.-2-5.2, zoned R-2 in the Town of Wilton. Permit originally granted on April 27, 2017 for a period of one year, is due for review and renewal.

Chariman O'Brien asked if Marissa Mackay was present. Ms. Mackay stated she was present and would like to renew her permit. She also said that she has a request for a slight modification and ask if the Board would entertain that request. She said that her friend's emu gave birth and died and the friend asked if Ms. Mackay could take the baby and put it on her farm which would take the same amount of space and wouldn't be any further encumbrance. Mr. Mykins asked how many animals the applicant has on the property currently. Ms. Mackay stated that she has 14. Mr. Mykins said she would then have to amend the permit. Ms. Mackay asked if they would then renew the current permit and then come back to modify next month. Attorney Grassi said that was correct and that notification must be given because she would be expanding beyond scope. Ms. Mackay said she would then move forward in that direction. Chairman O'Brien said that the applicant can take care of the amendment next month.

Mr. Kolligian asked when the permit expires. Ms. Mackay said that she had to push it back to this month so it technically was expired last month. Mr. Kolligian asked how the Board handles this. Chairman O'Brien said that the renewal for the current permit takes place tonight and the amendment will take place next month. Mr. Mykins said that was correct.

Mr. Kolligian made a motion to approve Appeal No. 2017-11 for Marissa Mackay, 25 Ernest Road, Gansevoort, NY 12831. The request for a Special Permit pursuant to Section 129-176 V. of the Zoning Ordinance; for agricultural use with animals conditioned upon 6-12 chickens, 2 alpacas or 2 pygmy goats, with a maximum of 13 animals on the property. The property is located at 25 Ernest Road, Tax Map No. 114.-2-5.2, zoned R-2 in the Town of Wilton. This permit was originally granted on April 27, 2017 for a period of one year but granting it for a period of two years.

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Mr. Barrett seconded the motion. Mr. Zabala, Mr. Barrett, Mr. Kolligian, Mr. Foehser, Mr. Ramsdill, and Chairman O'Brien. The motion passed.

APPEAL NO. 12-22 Mario Maresca, 124 Edie Road, Saratoga Springs, New York 12866. Request for the renewal of a Special Permit, pursuant to Section 129-176 (V) of the Zoning Ordinance for the keeping of chickens; property located at 124 Edie Road, Tax Map No. 141.-2-82, zoned R-2, in the Town of Wilton. Special Permit originally granted on May 24, 2012 for a period of two years, is due for review and renewal.

Chairman O'Brien asked if anyone was present to represent Appeal No. 12-22 for Mario Maresca. No one was present to represent the applicant.

Mr. Kolligian made a motion to table Appeal No. 12-22 for Mario Maresca. Mr. Ramsdill seconded the motion. All were in favor. The motion passed.

ADJOURNMENT:

Mr. Kolligian made a motion to adjourn the meeting at 7:28 pm. Mr. Ramsdill seconded the motion. All were in favor. The motion passed.

Dated: _____

BOARD OF APPEALS

BY _____

Lisa Muller, Zoning Clerk

BY _____

Joseph O'Brien, Chairman