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Zoning Board Chairman

**AMY DiLEONE**  
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**MARK MYKINS**  
Zoning Officer

**WILTON ZONING BOARD OF APPEALS**  
**THURSDAY April 28, 2016**

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, April 28, 2016 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, Robert Barrett, James Deloria, Dean Kolligian, Gerard Zabala, Charles Foehser, Scott Kingsley and Joseph Sabanos. Also, present were John Herlihy Assistant Zoning Officer and Justin Grassi, Town of Wilton Zoning Board of Appeals Attorney.

**ABSENT:** Mark Mykins

**MINUTES:** The minutes of the last meeting, held on March 24, 2016 were approved, as submitted, on a motion made by Mr. Robert Barrett seconded by Mr. James Deloria. All board members were in favor.

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

**RENEWALS:**

**APPEAL NO. 10-11** William Durrin, 124A Ingersol Road, Saratoga Springs, New York 12866. Request for the extension of a Special Permit, pursuant to Section 129-176 V of the Zoning Ordinance, for a private stable; property located

Permit originally granted on April 22, 2010 for a period of two years, is due for review and renewal.

Chairman O'Brien asked if Mr. Durrin was there. Ms. DiLeone said he could not make the meeting and Mr. Mykins suggested the appeal be tabled until the next meeting.

Mr. Kolligian made a motion to table Appeal No. 2010-11 until the next meeting. Mr. Kingsley seconded the motion. All Board members were in favor.

### **NEW BUSINESS:**

**APPEAL NO. 2016-08** Larry DeVivo, 16 Kings Road, Wilton, N.Y. 12831. Request for Area Variances, pursuant to Section 129-157 B, 129 Attachment 8, Schedule B, for a proposed 24' X 24' two car detached garage. Applicant is proposing an 11ft. front yard setback, relief of 39 ft. and a 14 ft. side yard setback, relief of 26 ft.; property located at 16 Kings Road, Wilton, N.Y. 12831, Tax Map No. 127.-1-35, zoned R-2 in the town of Wilton.

Chairman O'Brien asked if Mr. DeVivo was there. Mr. DeVivo said yes. Chairman O'Brien stated Mr. DeVivo wanted to build a garage. Mr. DeVivo said yes. Mr. Zabala asked Mr. DeVivo if the location of the garage could be pushed back so he did not need the Area Variance. Mr. DeVivo said it made the most sense because the driveway was leading right to it. It was a stone driveway but they were putting in an asphalt driveway this year. Mr. Ramsdill wanted clarification as to why it said 26 ft. Mr. DeVivo said it was because he measured from the edge of the road and he forgot that the stake for the property line sits back further. Ramsdill said so the 11 ft. was accurate. Mr. DeVivo said yes. Chairman O'Brien asked if there were any objections from the neighbors. Mr. DeVivo said no, they were all fine with it. Mr. Kingsley asked if there were any objections from the town officials because it was so close to the road. Mr. Herlihy said no.

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

Mr. Ramsdill made a motion to approve Appeal No. 2016-08 for Larry DeVivo, 16 Kings Road, Wilton, N.Y. 12831. Request for Area Variances, pursuant to Section 129-157 B, 129 Attachment 8, Schedule B, for a proposed 24' X 24' two car detached garage. Applicant is proposing an 11ft. front yard setback, relief of 39 ft. and a 14 ft. side yard setback, relief of 26 ft.; property located at 16 Kings Road, Wilton, N.Y. 12831, Tax Map No. 127.-1-35, zoned R-2 in the town of Wilton. The request for Area Variances were granted 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 Variances because, it's consistent with other properties that are extremely close to the road on that street, the topography and grade in the property makes it difficult to place it in any other area. As well as the existing shed that's on the property, it would make it harder to push it back much more from the 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 Variances because, the steep terrain near his property makes it difficult to place it in any other location on the property and there is a pre-existing shed. 3. The applicant has demonstrated that the requested Area Variances are not substantial because it's the minimal amount in order to place it properly. 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 several other properties have structures closer to the street than his, within a close proximity 5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Deloria seconded the motion. Mr. Zabala, Mr. Kingsley, Mr. Barrett, Mr. Kolligian, Mr. Deloria, Mr. Ramsdill and Chairman O'Brien. All Board members were in favor.

**APPEAL NO. 2016-09** Henry Bovee, 4 Pine Knoll Drive, Wilton, N.Y. 12831. Request for Area Variances, pursuant to Section 129-157 B, 129 Attachment 7, Schedule A, for a proposed 36' X 26' carport. Applicant is proposing a 20 ft. front yard setback relief of 30 ft. and a 15 ft. side yard setback, relief of 10 ft.; property located at 4 Pine Knoll Drive, Wilton, N.Y. 12831, Tax Map No. 153.15-1-6, zoned R-1 in the town of Wilton.

Chairman O'Brien asked Mr. Bovee if he wanted to build a carport. Mr. Bovee said yes. Mr. Bovee showed the Board a picture of the carport. Mr. Kolligian asked if it was going to be fully in closed. Mr. Bovee said yes. Mr. Bovee explained to the Board he had an existing tent and shed. Mr. Kolligian asked if he was going to be combining both of those into the carport. Mr. Bovee said yes he was going to take them both out and replace them with the carport. Mr. Ramsdill asked it was going to be even with the fence and the house. Mr. Bovee said it was going to be even with the fence and his garage. Mr. Bovee explained why he was placing the carport on that part of his property. He explained that the existing garage was built in 1997 and there was no cul-de-sac. Mr. Bovee explained he put the cul-de-sac in himself because he wanted a driveway. He said he couldn't set it back any further because his whole backyard was landscaped and it cost almost fifty thousand dollars. Mr. Bovee said he had gotten a price on the 26' x 36' car port but if they didn't have that one he would like to purchase the 28' x 36'. He asked the Board if that extra two feet would be a problem if it were not on the variance side. Mr. Bovee said it would be on the side of his house and he was forty some feet from his house. Mr.



Ramsdill asked if the Board established a setback and he moved closer into his property, that wouldn't matter. Mr. Herlihy said yes. Mr. Kingsley said Mr. Bovee was looking for relief on the frontage. Mr. Bovee said he was looking for the front and 15 ft. on the side. Mr. Barrett said as long as it didn't go any closer to the property line and it was going toward his house the same variance would apply. Mr. Bovee said he didn't see any of his neighbors there because he had already talked to them and they didn't care. Mr. Deloria said the rendering the Board had showed the cul-de-sac and he had measured 20 ft. from the arch of the cul-de-sac. Mr. Bovee said yes it was about 20 ft. and referenced another measurement of 40 ft. Mr. Deloria said that was his point if Mr. Bovee made this himself who owned the property. Mr. Bovee said he did not do that and showed Mr. Deloria what was there. Mr. Deloria said that was the highway boundary. Mr. Deloria said Mr. Bovee stated that he put the cul-de-sac in. Mr. Ramsdill stated that it was a rectangle and Mr. Bovee made it round. Mr. Bovee said it was just a straight shot and his cul-de-sac was on the right side and on his side, there was nothing but an Oak Tree. Mr. Bovee explains that he called Kirk Woodcock, and he asked him to have the tree cut down because it had started to rot. Mr. Bovee said he didn't know who owned the property and if they owned the property, would they give him permission to cut it down and he would pay for it. Mr. Woodcock said absolutely, if you want to pay for it cut it down. Mr. Deloria explained where the pin marks were and where the property should be measured from. Mr. Kolligian asked Attorney Grassi if he understood what Mr. Deloria was asking. Mr. Grassi said he did and it would depend on whether or not that property was eventually dedicated. Mr. Deloria asked who maintained the property. Mr. Bovee said he maintained the property. He explained when they plow, where they put the snow. Mr. Bovee said he plowed all of it. Mr. Kolligian said the reason Mr. Deloria was asking because if the property was not technically dedicated property to the town that was his property and he didn't need the variance. Mr. Kolligian said he would still need the side but he didn't need the front. Mr. Kolligian said that they could give the variances for the front and the side and the front would be contingent upon the evidence that parcel is not owned by the applicant. Mr. Bovee said he didn't care who owned it the Town could own it. Mr. Kolligian explained that the Board had to identify it for the variances that he was seeking. Mr. Kolligian said Mr. Bovee was seeking a variance on the front piece as well as the side. He said no matter what he was still going to need a variance on the sidepiece of property, even though he had made the cul-de-sac if Mr. Bovee owns that little piece of the semi-circle he would not need that variance on the front of the property. Mr. Kolligian said it was because you would go into the property line, not the semi-circle. Mr. Bovee said it was about 47 ft. Mr. Ramsdill said he would need a more accurate measurement if it were deemed that it was not town property. Attorney Grassi said it sounded like either way there would be a necessity for a 3 ft. front variance as opposed to the 30 ft. Mr. Deloria said the drawing didn't have a legal description so the Board really didn't know what his property boundary lines were. Attorney Grassi said the applicant had demonstrated that he had a survey done. Mr. Bovee said that was a



survey and he did not draw it. Mr. Deloria said he knew that and he was used to reading them and he showed Mr. Bovee where he thought his property line was. Mr. Zabala said it was paved off street parking that had been created adjacent to the public street. Mr. Deloria said if the Town doesn't maintain it, it was not even a road by use. Mr. Bovee said that the Town does not maintain it. He explained how they plow the road to the Board. Mr. Kolligian asked Attorney Grassi what he would suggest if the Board were able to grant the applicant the relief he requested based upon the application and the map that was provided if did the front yard were they going grant the request of 30 ft. in the front. Attorney Grassi said as a Board they were required to grant the minimum relief necessary. He explained that they could grant the 30 ft. variance with a condition the 30 ft. is necessary based on an accurate survey or they could grant the opposite and grant the 3 ft. variance with a condition that only 3 ft. is necessary. Mr. Kingsley said they didn't have definitive knowledge to knowing whether he owns that property or the Town picked that up 20 years ago. Mr. Bovee said the Town owns it because he had it surveyed. Mr. Bovee said that he measure 20 ft. from the center back and it was even with his garage. Mr. Zabala asked about the installation of the paved area and since it was owned by the town had he come to Planning Board or the Town Council. Mr. Bovee said no that was back in 1997 they had a problem with one of the neighbors who no longer lives there. He said he set the tent that he has now back, and he got a summons to do it. Mr. Bovee said they came down and checked it all out and they approved it. Mr. Bovee said his neighbor parked in the front of where the tent was so he could not get in it. Mr. Zabala said on the street. Mr. Bovee explained that he spoke with someone from the Town and they told him that if he put a gravel driveway or paved you could have him towed away because he is blocking your driveway. Mr. Bovee said that was why he paved his driveway. Mr. Kolligian addressed Attorney Grassi about the verbiage in Mr. Mykins determination and said the applicant has 20 ft. and is requesting 30 ft. in the front. Mr. Kolligian said if the Board granted the request, they would base it on the determination made by Mr. Mykins with a condition it could be determined at a later date that there may only be 3 ft. necessary or whatever it would be. Mr. Kolligian said he would be afraid to say what that number would be because they didn't know. Attorney Grassi said as an alternative what the Board could do was to be descriptive enough based on the plans that have been submitted. If the Board were comfortable with the location as it was proposed and they wanted to provide a variance of the minimum footage necessary. Mr. Ramsdill said the Board could not calculate the depth of the pavement based on the information. Attorney Grassi agreed and said what they would do was to say, so that the carport was located 20 ft. from the turnaround. Mr. Bovee said that was where he measured, from the turnaround and it was 20 ft. Mr. Bovee said he was going to go with 47 ft. if he went from point to point. He was told he needed to measure from the cul-de-sac. Mr. Ramsdill asked who had told Mr. Bovee to measure from the cul-de-sac. Mr. Ramsdill asked it was someone from the town and then he asked if it was Mr. Mykins. Mr. Bovee said he couldn't remember his name; it was someone from the



town. Ms. DiLeone said it was Mr. Mykins. Mr. Ramsdill said ok, Mr. Mykins said that you didn't own that. Mr. Bovee asked if Mr. Mykins was the guy that lived on Jones Road Mr. Kolligian said yes. Mr. Bovee said Mr. Mykins had been to his property to look at it. Mr. Zabala said he had gone down there and it looked like a piece of the public street. Mr. Kingsley said he had driven by also and thought any common person driving that street would think that was part of the public highway. Mr. Bovee said that they had garbage trucks that go down that road and before they couldn't even turn around, now they can turn around there. Mr. Bovee said that it benefited the Town and if he had known he didn't have to spend the money, he would not have. Mr. Ramsdill said based on the Boards understanding of what Mr. Mykins believed; because he was the one who approved what they were going to be reviewing, he thought it would be a relief amount of 30 ft. Mr. Ramsdill said they could condition that based on a review of the property to be appropriate or make it if the line was across the front of the house 47 ft. and that would be appropriate to do. Attorney Grassi said it would be appropriate to rely on the Code Enforcement Officer's determination. If they wanted to make the approval conditioned upon a satisfactory survey showing that it was the minimum variance necessary they could do that that. If it wasn't the minimum essential, he would come back show the survey that showed the 3 ft. you could change the variance to the 3 ft. variance. Mr. Ramsdill asked if the survey should that the line was actually across the front and Mr. Bovee actually owned all the blacktop and they granted him 20 ft. if it was conditioned it wouldn't mean that it would be 20 ft. off of the property line. Attorney Grassi said if it was conditioned on an accurate survey and the survey finds otherwise then they could change the variance. Mr. Bovee explained how he got the 20 ft. Mr. Ramsdill explained that the Code Enforcement Officer has agreed that the edge of the pavement is what the Board was going to go by. Mr. Barrett said that they would need to know that if sometime in the last nineteen years that the town didn't say that was part of their road now. Mr. Deloria said they didn't maintain it. Mr. Bovee said if they wanted it they could have it, he didn't care. Chairman O'Brien said they would go along with what Mr. Ramsdill said. Mr. Kolligian asked Chairman O'Brien what he said. Chairman O'Brien said they should go along with what Mr. Ramsdill said. Mr. Kolligian said yes, Marks determination. Mr. Kolligian said the condition he thought would be favorable for the Board would be to base it conditionally on the packet of information that was submitted. Mr. Kolligian explained that if there ever was an updated survey done it wouldn't come back on the applicant at that point in time. Mr. Bovee explained he had his property surveyed when he had the problem with the neighbor. Mr. Deloria said the survey was dated 1968 and it was revised in 1969. The Board members were confused by the map and when the cul-de-sac was actually put in. Mr. Ramsdill said they had the confusing map but they had Mr. Mykins determination that it should be a certain amount based on the packet that was submitted.



Mr. Ramsdill made a motion to approve Appeal No. 2016-09 Henry Bovee, 4 Pine Knoll Drive, Wilton, N.Y. 12831. Request for Area Variances, pursuant to Section 129-157 B, 129 Attachment 7, Schedule A, for a proposed 36' X 26' carport. Applicant is proposing a 20 ft. front yard setback relief of 30 ft. and a 15 ft. side yard setback, relief of 10 ft.; property located at 4 Pine Knoll Drive, Wilton, N.Y. 12831, Tax Map No. 153.15-1-6, zoned R-1 in the town of Wilton, were granted 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 Variances because the structure would be replacing several smaller structures that already exist in that exact location and would be an improvement to what already exists. 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 way his house is located, the landscaping in the rear yard and it will be replacing structures that currently exist. It will make the area better and it will be an improvement. 3. The applicant has demonstrated that the requested Area Variances are not substantial because it's essentially replacing structures that are currently in that location already. 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 it's going to replace several smaller structures that are in somewhat of a state of less repair with a newer better looking structure. 5. The applicant has demonstrated that the alleged difficulty is self-created. This shall be conditioned upon the documents that were submitted being accurate in terms of determining the front yard setback amount.

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

**APPEAL NO. 2016-10** A.J. Signs, 842 Saratoga Road, Burnt Hills, N.Y. 12027. Request for an Area Variance for signage, pursuant to Section 129-181 B. (2) (a) for an exterior attached sign, relief requested is for an attached sign that will not have a separate entrance. Property located at 3031 Route 50, Saratoga Springs, N.Y. 12866, Tax Map No. 153.-3-48.1, zoned C-1 in the town of Wilton.

Mr. Kingsley recused himself. Chairman O'Brien asked if one of the alternates could sit in. Attorney Grassi said yes. Mr. Foehser also recused himself. Mr. Sabanos joined the Board.

Chairman O'Brien read a referral from the **Saratoga County Planning Board.**



**Decision:** No Significant County Wide or Inter Community Impact

**Comment:**

It is understood that CVS is or will be conducting those pharmacy operations now located within (and managed by) the existing Target retail store. Target has had an exterior "Pharmacy" sign on its building frontage as federal regulations require such signage ("Pharmacy") on exterior for any pharmacy operating within. Now CVS wants to add its company letters before that wording. While the request and the associated variance pose no direct county impact, the Saratoga County Planning Board does recognize that there is a past precedence in the town for the disapproval of variances for exterior signage for a user that is interior or accessory to the principal use. Determination of the appeal is deemed to be a local decision.

Tom Wheeler from AJ Signs introduced himself to the Board. Mr. Wheeler explained that regionally CVS was taking over the pharmacies in Target. He said they had done three so far Latham, Colonie and Rensselaer. Mr. Wheeler said they would take down the pharmacy letters and put up red letters, internally lit channel letters and has a heart that says CVS Pharmacy. He said the sign would be the same size and in the same location and it would say CVS. Mr. Zabala asked whom Mr. Wheeler worked for. Mr. Wheeler said he worked for ICON a national company that handles all of the CVS signs. Mr. Kolligian said they were going to remove the word pharmacy that was on the exterior of the building and the heart, CVS and the word pharmacy will still all be the dimension of the current word. Mr. Wheeler said yes, the word pharmacy that was currently there was very spaced out. Mr. Zabala said there was not a target bullseye in front of the word pharmacy now. Mr. Wheeler said no the word pharmacy was on its own and the Target bullseye was over the center. Mr. Ramsdill asked Mr. Wheeler how much of a hurry they were in. Mr. Wheeler said he was sure they were in a pretty good hurry they had already done nine stores in three weeks. Mr. Kolligian stated they gave you nine stores in three weeks. Mr. Zabala asked Mr. Wheeler if he understood why he had to submit for the variance. Mr. Wheeler said yes. Mr. Zabala explained the town of Wilton had a code and their sign was in conflict with what the town allowed. Mr. Ramsdill explained it was not an Area Variance concern it was they would be establishing a precedence potential to allow signage for businesses that don't have an external entrance that was unique to the property within the larger building. Mr. Ramsdill used the mall as an example all of the stores within the mall don't have signs on the outside because they don't have external entrances. Mr. Ramsdill said the question was did the Board want to establish that precedence or has anything like this occurred before. Mr. Wheeler asked what other stores in the mall had. Mr. Ramsdill said the Board was in dispute about that and was why he was asking what his hurry would be because they wanted to potentially table this and try and look into if there was ever a variance granted in the past. Mr. Wheeler asked about the movie theater being on the other side and you had to go through the mall to get to the movie theater. Mr. Zabala said they were not going to identify the areas they were speaking about. He said as of now the sign did not conform to the town of Wilton sign requirements and for the Board to make a determination that night



would send them down a path where other businesses currently there or in the future and it would negate what they had in place and what had been established. Mr. Ramsdill said the Board would need to feel that there were some special characteristics of their proposal that wouldn't immediately translate to every other business within a larger building being allowed to have signs. Mr. Ramsdill said he would like to get some information regarding the granting of any variances in the past and that might be something to argue when they came back next month. Mr. Wheeler asked Mr. Ramsdill if he should, do some research as well. Mr. Ramsdill said it wouldn't be a bad idea to have reasons why their property would be different than other businesses that already exist that the Board has denied this privilege to in the past. Mr. Wheeler asked if the Building Department would have that information. Chairman O'Brien and Ms. DiLeone said yes. Mr. Deloria asked if they understood the flip side of it was if the Board made a motion and voted and it wasn't favorable that was worse for them. Mr. Wheeler said he understood. Mr. Kolligian said the Board just wanted to get it right, they weren't digging for excuses to say no they were just looking to get it right. Mr. Wheeler said that he understood.

Chairman O'Brien said the Board would table it. Mr. Ramsdill made a motion to table Appeal No. 2016-10.

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

**ADJOURNMENT:**

Mr. Ramsdill made a motion to adjourn the meeting at 7:40 p.m. Mr. Kolligian seconded the motion. All board members were in favor. The motion passed.

Dated: May 27, 2016

BOARD OF APPEALS

BY Amy DiLeone

Amy DiLeone, Zoning Clerk



BY Joseph O'Brien Ad

Joseph O'Brien, Chairman