

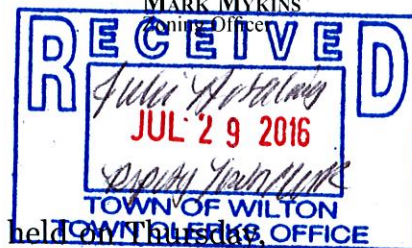


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JOSEPH O'BRIEN
Zoning Board Chairman

AMY DiLEONE
Zoning Clerk

MARK MYKINS
Zoning Officer



WILTON ZONING BOARD OF APPEALS
THURSDAY June 23, 2016

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, June 23, 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, Gerard Zabala, Joseph Sabanos and Charles Foehser. Also present were, Justin Grassi, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Dean Kolligian and Scott Kinsley

MINUTES: The minutes of the last meeting, held on May 26, 2016 were approved, as submitted, on a motion made by Mr. Deloria seconded by Mr. Sabanos. 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 extension 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 Mr. Maresca if he would like his permit extended and he said yes. Chairman O'Brien asked if there were any questions. He asked Mr. Mykins if there were any concerns. Mr. Mykins said there were no issues or concerns.

Mr. Ramsdill made a motion to renew Appeal No. 2012-22 for a Special Permit for the keeping of chickens for an additional two years.

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

APPEAL NO. 12-27 Jody Cracco, 7 Greenwood Road, Lake George, New York 12845. Request for an extension of a Special Permit pursuant to Schedule N and Section 129-176 T 1,2,3,4 and 5 of the Zoning Ordinance for a Day Use Dog Kennel; property located at 474 Route 9, Tax Map No. 153.13-1-4.2, zoned CR-1, in the Town of Wilton. Special Permit originally granted on June 28, 2012 for a period of two years, is due for review and renewal.

Chairman O'Brien asked Ms. Cracco if she would like her Special Permit extended. Ms. Cracco said yes.

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

Mr. Barrett made a motion to approve Appeal No. 2012-27 for Jodi Cracco, 7 Greenwood Road, Lake George. Request for a Special Permit for Day Use Dog Kennel for a period of two years.

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

NEW BUSINESS:

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.

Chairman O'Brien asked Mr. Wheeler if he was representing A.J. Signs. Mr. Wheeler said yes. Mr. Wheeler said they were looking to get the sign approved and they had presented quite a bit of information at the last meeting. He explained

there were many other stores that didn't have a separate entrance and had other entities in them and they were trying to get CVS to have that as well, in Target.

Mr. Merritt introduced himself as Doug Merritt the agent representing CVS Health, the parent company of CVS Pharmacy and that he was also the agent for Target. Mr. Merritt said thank you and it was brought to his attention that it might be in their best interest if he came to the meeting to have the opportunity to engage the Board and most importantly answer any questions that the Board may have. He said he had read through the minutes and he had noticed there was quite a bit of exchange and that's why he wanted to make sure he was there, if the Board had questions of a technical nature. Mr. Merritt said he had an opportunity to digest and dissect our ordinance in great detail and he spent a lot of time on it. He said if there were questions about the continuation of a second CVS facility, a standalone facility in the community he said that by the introduction of CVS pharmacy and the acquisition of the Target pharmacy there was no schedule for vacating stores. Mr. Merritt said this was a second operation within the community. He said that they were expanding their footprint by exactly 1,793 stores. Mr. Merritt did not go into the nuts and bolts of the acquisition with Target. He said they were not receiving any pushback in the way of not being able to get their signs; this was a first for them. Mr. Merritt said he thought he would come out and actually answer some questions from the Board. Chairman O'Brien said thank you. Mr. Merritt said you welcome. Mr. Ramsdill explained that he believed part of the conversation at the last meeting wasn't focused on the closing of another CVS. It was establishing a precedence that was in conflict with the current method of proceeding. It was about allowing an exterior sign for a building that is on the interior of a larger structure, with no direct exit or entrance into the building. Mr. Merritt said yes he had an opportunity to read through the minutes and the lengthy discussion on multiple topics, that there were questions about. He said Mr. Wheeler was a good steward and representative on their behalf, and he thought Mr. Wheeler did a great job of explaining that if it was a precedence matter and the precedence was established currently. Mr. Merritt you had to look at Bandfield, which is a company that was owned separately from PetSmart. He said it was actually a company called Medical Management Incorporated and PetSmart did not own them. Mr. Merritt said that precedence was established as well as the Staples next door. He explained that when you look at Staples there was a UPS sign on the front of the building and Staples does not own UPS. Mr. Merritt said they were the United States Post Office and obviously, Staples did not own it. Mr. Merritt said he wanted to make sure they had an opportunity to engage in positive dialogue and answer questions the Board may have, so they could move forward and make sure that all 1793 stores have the logo and CVS pharmacy on the front of the building. Mr. Deloria said one point that was not discussed at the last meeting was that Target was located at the corner of Weibel Avenue and route 50 and he had asked the question last week if it was going to be on the larger sign of the plaza and it was not. Mr. Deloria said it would be very hard to convince him and the gentlemen that spoke at the last meeting said

it would be for people who are from out of town to locate the pharmacy. He said if you were driving down Weible Avenue or Route 50, the Target store was recessed back and he could not be convinced that you would be able to see CVS on the front of the store. Mr. Deloria said his argument was it really didn't serve a purpose. Mr. Merritt said Mr. Deloria raised a very good point and how he answered it was they had 1793 Target facilities that will have CVS pharmacy and they didn't want to make it 1792. Mr. Merritt said when you looked at the conversion that is running concurrent across the entire United States and there was one Target that does not have the CVS pharmacy inside and pull into that Target parking lot and if you weren't familiar with that property and you don't see CVS pharmacy you turn and leave. Mr. Merritt said they didn't want to lose an opportunity for someone that was from out of town. He said with 1793 stores, they didn't want it to be 1792 because that could deter one of their patrons because they own and operate the pharmacy inside the store. Mr. Barrett said using their argument, wouldn't that same argument apply to the UPS and the post office sign in front of Staples. Mr. Deloria said that they didn't vote on those signs and he couldn't comment on those signs that are there. Mr. Ramsdill asked Mr. Mykins about the UPS sign. Mr. Mykins said he didn't know about the UPS sign itself. He explained that the United States Postal Service put the sign on Staples, not Staples. Mr. Mykins said the US Postal Service refused to take it down. He explained they were a federal entity and he did not have jurisdiction over them, they had authority over them. Mr. Merritt said that was a good point. Mr. Merritt said Banfield was not a federal, he thought it was private. Mr. Mykins said Banfield was there before their sign ordinance was. Mr. Mykins said if he had read the minutes, it was noted that was said at the last meeting. Mr. Merritt said he had read the minutes. Mr. Merritt said he thought it was important that they didn't set a precedence with their operation by having one facility in the United States that does not have the CVS pharmacy on it.

Mr. Zabala said he would like to ask a couple of questions. He said the CVS store on Route 9 in Wilton was a whole retail operation, a pharmacy business and a retail store. Mr. Zabala said they were taking over the Target pharmacy business not their retail operation. He said if he were looking for a type of CVS antacid because they work the best for him. Mr. Zabala said if he saw CVS and went in to Target and there would be nothing but Target antacids there. He said that CVS was taking over only the pharmacy the distribution of those controlled items from the pharmacy itself not even over the counter items like aspirin. Mr. Zabala asked if that was correct. Mr. Merritt said his intent tonight was not to explain the acquisition between CVS pharmacy, technically CVS Health and Target. He explained to Mr. Zabala's point was in fact the pharmacist were located in the building and they abide by multiple entities for compliance not just state, it was federal. Mr. Merritt said that there were guidelines for their pharmacists; there was a pharmacy board within the state and they must brand their building if it is their pharmacist. Mr. Merritt said it was a philosophy and also insurance. He said Target made the decision to remove their operation; CVS negotiated an operating deal to take over

and brand all of the facilities, as CVS pharmacy. Mr. Merritt said there was a great deal of customer perception; they want to be assured that if you go to Walgreens, Rite Aid, formerly Eckert or even some of the regional and smaller communities operations that were required by the larger outfits. Mr. Merritt said you grow to have a trust with your pharmacist and a respect for your pharmacist. He said some people would say it's a CVS pharmacy, it's the same CVS pharmacy across the United States, so it was more of a blanket trust. Mr. Merritt said they wanted to make sure that CVS pharmacy is on the front of the building so that the trust is conveyed to the consumer. Mr. Zabala said CVS Pharmacy had two operating entities a retail business and the pharmacy itself the controlled license building. He said he was sure they had notified all Targets customers and had done a marketing campaign to make them aware of that and he was sure they were aware. Mr. Zabala described a situation regarding someone from out of the area who preferred a CVS product that was over the counter and the person goes into CVS in Target and is unable to buy the CVS product. Mr. Zabala said if there was a CVS logo on the building but it was not a CVS store within the operation. Mr. Merritt said that when he looked at the spirited intent of the ordinance they were looking for a door. Mr. Zabala said that was correct. Mr. Merritt said they didn't have a door and that there were multiple points and establishments in the community that they could base their future decisions on how they wanted to perceive, based on the fact that there was a precedence already established. Mr. Merritt said they were not asking for an Area Variance for a large sign, they were doing like for like. He said they were not increasing the square footage to the extent that it was garish on the building. Mr. Merritt explained it was a very tasteful sign that met the spirit and intent and it was the same size or smaller than what was on there today. Mr. Zabala explained he was not doing the pros and cons about the business and the Board had an obligation to look at what they were supposed to adhere to and that was what they were trying to do. Mr. Merritt said that Mr. Zabala was asking about operational things. Mr. Zabala said he understood that but he thought the identification of CVS pharmacy was going to perhaps unintentionally lead people to believe that the retail operation was there. Mr. Merritt said he thought it was clear when you interacted with the pharmacist or called ahead of time, you had the opportunity to ask questions and engage the pharmacy staff. Mr. Zabala said if that was the case then why you would need the logo. Mr. Merritt said they did not want to be a position where they had 1792 stores and Saratoga Springs/Wilton is the one lone operation where they do not have a sign. He said he understood Mr. Zabalas point and rather than go into a very protracted conversation there were other people on the agenda and he did understand. Mr. Merritt said they were just simply asking for a sign on their building to represent their company, their operations, and their pharmacist He said they wanted to be compliant to the deal that they had entered into with Target. Mr. Foehser said he could respect that from the company's perspective. He said he was looking at it as being on the Zoning Board and he had to look at it five steps forward. Mr. Foehser explained that when Target came in and Walmart was built they were allowed to put the pharmacy signs on the

outside of the buildings according to federal regulations. He said they did not brand their pharmacy when they put it up. Mr. Foehser said the concern that the Board had was if they said yes to CVS pharmacy and if trends continue Walmart could say they were going partner with Walgreens or Rite Aid and the Board would be in the same situation. He said 1700 boards would be facing the same type of situation, when they were looking at their zoning ordinance. Mr. Foehser said that was the question the Board would have to ask themselves looking down the pike. He said Starbucks was in the store and the CVS thing decides to end 10 years down the line and Starbucks says the pharmacy is no longer in Target and they want to put a Starbucks sign. Mr. Foehser said there were three Starbucks that would want to brand a logo and then the precedence would be set. He explained that the Board would to be very careful as to how they were treading this line. Mr. Foehser said Pharmacy was allowed but in other case it was pre-zoning or before it would have been allowed without the Federal Statute making it happen to have pharmacy on the building to begin with. He said changing it to a branded pharmacy changes the future outcome of the way the Board had to approach everyone out there from Walmart, to Price Chopper or Market 32 and the mall. Mr. Merritt said to Mr. Foehsers point the precedence was established and if you change the Zoning Code tomorrow and significant changes were made to the language within the codified ordinance the Board would be facing additional requests and petitions of varying nature. Mr. Merritt said that was what the Zoning Board of Appeals was for, so they wanted to come here and engage with the Board in dialogue to determine the best course of action for them as a company. He explained they were their pharmacists in Target, not Targets. Mr. Merritt said the building that shared a common firewall had a similar situation and he understood that it was pre-zoning. He said just to say that it was pre-zoning....it went back to a situation that they wanted to make sure it was fair and just as the Board was pointing out. Mr. Merritt said they wanted to make sure they had an opportunity because they were their pharmacists not Targets. Mr. Ramsdill asked how they differed from Starbucks. Mr. Merritt said if you went to Walmart there were eight different signs on the building, food, lawn and garden and they were permanent signs on the building. He looked at that and compared square footage to quantity and if had read the minutes it was stated that at the mall, there was an anchor and the decision had been made to allow the anchor within the mall footprint because of its size it was unique. Mr. Merritt said Walmart was pretty big too and so was the Target footprint and Target had three signs. He said lets go into food operations should they have the opportunity to put a sign on the building. Mr. Merritt said it was an open-ended question. Mr. Mykins said if they went by what Mr. Merritt was saying they should, they would be able to allow everyone that wants to have a sign on the outside of the building to have one. Mr. Merritt said what he was saying was they had already allowed this; it was already on the common firewall. He said PetSmart did not own Banfield and UPS was not owned by staples. Mr. Mykins said he was right, but if Banfield was to...Mr. Merritt interrupted by saying, they weren't interested, they could make the approval specific. Mr. Mykins said to let him speak for a minute. He said if they

were to come into tomorrow and want to expand the sign, they would only be grandfathered for what they had. Mr. Mykins said if they were to take that sign down and put a different sign they would automatically be in the same situation that Mr. Merritt was in. Mr. Mykins said they were grandfathered to zoning to begin with. Mr. Merritt said he understood. He said the decision should be based on the specific intent, the specific company and the specific operation. Mr. Mykins said there needed to be a uniqueness to the sign. Mr. Merritt said it was definitely unique it was CVS pharmacy inside Target and he thought that was pretty unique. Chairman O'Brien asked Mr. Merritt if this was his first endeavor in this type of situation. Mr. Merritt said no and that they were already branded. Chairman O'Brien asked if they were in other Targets. Mr. Merritt said yes. Mr. Mykins said they were in all the Targets. Mr. Deloria asked if every single Target that they were in had a common entrance. Mr. Merritt said furthermore what the Board should look at was the communities that have accepted their application and had come back to them and said you need a separate business license and that was their qualifier. He said they had an opportunity with the business license to monitor that and track it because it was a separate entity. Mr. Merritt said they had not been faced with a situation where they had been told that they couldn't have a sign, this was a first, and this was why he was at the meeting. He said this was a first and this was why he was there; it was the first location that this had been presented to them. Mr. Deloria said to the Boards point that is a corridor that was busy with retail and big box they have had other applicants in front of the Board and it only going to expand. He said it would serve their needs but would put the Board potentially in a precarious situation down the road. Mr. Deloria said Mr. Merritt would walk out of there with their approval and would be a happy guy. He said the Board was wrestling with where this would leave them moving forward. Mr. Deloria said the fact that things were grandfathered was a fact and there was nothing that the Board could do about that and there was nothing Mr. Merritt could do about that. He said that happened before the law was put into place. Mr. Deloria said the functionality of it was the ZBA was to uphold whatever the law was and that was what the Board was trying to do, not only with his application but how they were going to do their job moving forward. He said that there was a lot of signage in that corridor and in his opinion; he had been opposed to other increases in signage along that way. Mr. Barrett asked if it was really an increase in signage, he thought it was just a replacement of a sign that was the same exact size. Mr. Deloria asked about the next application. Mr. Barrett said if they were the same conditions what difference would it make. He said they were not talking about a new sign; it was a replacement of an existing sign with the same size sign. He said the sign was already there. Mr. Deloria said there was a Starbucks in that location, what happens next month when they show up at the meeting wanting to put a sign up. Mr. Barrett said that would be a new sign and that was different. He said they were not replacing a sign; they would be putting up an additional sign. Mr. Barrett said he wasn't there last month and was a little confused with the arguments. He said they were not adding a sign they were replacing a sign with the same size sign that has more letters. Chairman

O'Brien said technically it was a new sign. He said it will have CVS on it and that was not there now. Mr. Barrett said they were adding three letters, so that makes it a new sign. Chairman O'Brien said he would say so. Mr. Mykins said they wouldn't be sitting there if it wasn't. Mr. Barrett said ok, but he was still a little confused because there was a sign there now that said pharmacy that was being taken down and putting CVS pharmacy up. Chairman O'Brien said it was a new and different sign. Mr. Barrett said it was not a blank wall; it was not going on a wall where there was no sign before. Mr. Mykins said it was not an additional sign. Mr. Barrett said that was what he was talking about. Mr. Mykins said it was a new sign and not an additional sign. Mr. Barrett said thank you that was the word he was looking for. Mr. Zabala said the word pharmacy or pharmaceutical logo; mortar and pestle he believed were required by some federal regulation and that was the reason why the separate word pharmacy was put on the Target store. He said they didn't put Target pharmacy there, they put pharmacy; now they are asking to brand it with a company logo. Mr. Zabala asked if the Target sign above the main entrance was removed and smaller and CVS pharmacy was put underneath the Target sign was that something that could be a one for one swap. Mr. Mykins said that would take a determination of the Board. Mr. Ramsdill said he would have perceived it as the same problem because essentially what the Board was looking at and the unique characteristics and that was what they were struggling with, so they didn't set a precedence. He said if there was a business within a larger business and did not have its own entrance or exit then they have been very reluctant to approve additional signage. Mr. Ramsdill said that Ulta actually installed a small door next to Dicks, just so they could gain access to having signage. He said they could not just say that it would be better business practice for CVS and Target and that it would be ok because every store in any building would say that would be great for them as well. Mr. Ramsdill said they would need some feature of their project to be unique and different that would not establish a precedence that would allow every store in the mall to do the same thing. He thought the main tripping point for them now was having Starbucks right there in Target. He said what would prevent them from wanting the same thing. Mr. Merritt said from reading the ordinance he didn't think it was as clear as the technical nature that they had before the ZBA. He said they had a few communities and they said their ordinance didn't specifically say subtenant or sublease and they asked them for a business license and treated them as a business on that parcel. Mr. Merritt said that was how they had worked through some of these situations. He said this situation was a first based on very localized language within an ordinance and he didn't see it as being crystal clear, that a subtenant cannot have a sign on the building. Mr. Merritt saw a building with an entrance and he didn't see any regulation saying a subtenant may not have a sign. Mr. Mykins read from the code book reading what it said in the code was; attached signs shall be allowed only when the main entrance is to a business or industry exists to the building exterior any other provisions of this article notwithstanding. Mr. Mykins tried to explain that if they didn't have that entrance and were a separate entity. Mr. Merritt

interrupted and said they had an entrance, and it was a common entrance. Mr. Mykins said it was the main entrance to Target it was not the main entrance to their store. Mr. Mykins said they had Victoria Secret, Rue 21, DMV and hundreds of businesses out there that didn't have separate signage that are within a store including Starbucks in three different locations. Mr. Merritt said he thought it came down to the interpretation and said he would have to respectfully disagree. Mr. Merritt asked if the appeal could be tabled. Mr. Mykins said the appeal couldn't be tabled. Mr. Grassi said there had already been a determination by the zoning officer that the application needed a variance, so the question as whether or not it was necessary or the language was clear enough has been answered. That determination has not been appealed. He said it could have been. Mr. Grassi said they were only deciding whether they were granting or denying a variance for the sign. He said that tomorrow was the deadline and if there was, no vote that night then the application was deemed denied for failure to have a decision within sixty-two days. Mr. Merritt formally withdrew the application and said he would be in touch with Attorney Grassi. Chairman O'Brien asked if that was ok. Attorney Grassi said that worked. Chairman O'Brien asked Mr. Merritt if that was what he wanted to do. Mr. Merritt said they were going to withdraw and he and Mr. Grassi were going to have extensive conversations. Mr. Merritt thought it was in their best interest at the time. Chairman O'Brien said that meant they would have to file a new appeal. Mr. Merritt said that was correct.

APPEAL NO. 2016-13 John M. DeLessio, 20 Farmington Ave., Wilton, N.Y. Request for an Area Variance, pursuant to Section 129-157B, 129 Attachment 7, Schedule A, for a side yard setback, relief of 25 ft. For a proposed 18 foot by 36 foot swimming pool; property located at 20 Farmington Ave, Wilton, NY 12831, Tax Map No. 140.10-1-63, zoned R-1 in the Town of Wilton.

Chairman O'Brien asked if they had the green card. Ms. DiLeone said yes all but one. Chairman O'Brien stated Shana Mevissen was the missing card.

Chairman O'Brien read a favorable correspondence from Timothy DeLessio.

Mr. DeLessio said they wanted to build a pool and didn't have a lot of options because of the leach field and being on a corner. Mr. DeLessio explained they had placed the pool as close to the house as possible. He said they were going to put another fence around the pool area and any further out a gate just wouldn't be functional. Mr. Ramsdill asked what the side yard setback was for a pool. Mr. Mykins said they had special setbacks and for a it would be 20 ft. Mr. Ramsdill said it was a corner lot and it counts as two fronts. Mr. Mykins said correct it was two fronts. Mr. Mykins said it had to be 50 ft. from each property line. Mr. Zabala asked if there were any issues with utilities. Mr. Mykins said no. Mr. Mykins said they would have to use Dig Safe before they began to dig. Mr. Zabala ask if there were any concerns from neighbors. Mr. DeLessio said no. Mr. Zabala asked if there were

other pools in the area. Mr. DeLessio said yes, there were other pools in the neighborhood.

Chairman O'Brien asked if there any questions or concerns. Mr. Deloria asked if it was an in-ground pool. Mr. DeLessio said yes.

Mr. Ramsdill made a positive motion to approve Appeal No. 2016-13 for John M. DeLessio, 20 Farmington Ave., Wilton, N.Y. Request for an Area Variance, pursuant to Section 129-157B, 129 Attachment 7, Schedule A, for a side yard setback, relief of 25 ft. For a proposed 18 foot by 36 foot swimming pool; property located at 20 Farmington Ave, Wilton, NY 12831, Tax Map No. 140.10-1-63, zoned R-1 in the Town of Wilton, was 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 Variance because there are other properties that have pools and it is the only location that he can place it on his property. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by an Area Variance because of the location of the septic, current location of the house and given the fact that there are two front yard setbacks to deal with. He is trying to place it in the most reasonable position. 3. The applicant has demonstrated that the requested Area Variance is not substantial because of the fact that he is going to need two gates; he has a limited amount of room that he cannot push back towards his house because of the separate pool fence that will be required 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 there are other properties with pools in the neighborhood and it will fit nicely where he is proposing to place it. 5. The applicant has demonstrated that the alleged difficulty is self-created.

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

APPEAL NO. 2016-14 Catherine Marrano, 10 Raspberry Drive, Malta, N.Y. 12020. Request for Area Variances, Pursuant to Section 129-157B, 129 Attachment 8, Schedule B, for front yard setback, relief of 20 ft. and side yard setback, relief of 23 ft. To construct a single family home within 100-foot buffer of the Bog Meadow tributary, required in Section 129-198; property located at 366 Loudon Rd., Wilton, N.Y., 12866, Tax Map No. 154.-1-46, zoned R-2 in the Town of Wilton. Chairman O'Brien read a correspondence from the Saratoga County Planning Board.

SCPB Referral Review# 16-113-Area Variance-Marrano

2 Area Variances-front yard setback of 30' vs. 50' required.

Side yard setback of 17' vs 40' required

Louden Road (municipal boundary w/Saratoga Springs)

Received from the Town of Wilton Planning Board on June 7, 2016.

Reviewed by the Saratoga County Planning Board on June 16, 2016.

Decision: No Significant County Wide or Inter Community Impact

SCPB recognizes the local and DEC review of house citing to be based upon wetland boundary and the buffer area requiring permit.



Michael Valentine, Senior Planner
Authorized Agent for Saratoga County

Chairman O'Brien asked if they had the green card for Mark Dean. Ms. Marrano said no. Chairman O'Brien asked if there was any problem with the DEC., Mr. Mykins said Ms. Marrano would still need additional permits from the DEC but DEC had asked her to place the house as far as possible from the wetlands and she had done that. Ms. Marrano said she would like to construct a single family home within the 100 ft. buffer from the Bog Meadow Tributary. She said that the DEC had given her a positive recommendation for the placement of the home. Ms. Marrano said the relief that she was requesting was 20 ft. front yard setback and 23 ft. side yard setback. Mr. Ramsdill said the property was very unusual. Ms. Marrano said that it was very unusual.

Chairman O'Brien asked a member of the audience to identify themselves when they addressed the Board. Dorothy Erck identified herself and said she lived at 362 Loudon Road. Ms. Erck said that the Bog Meadow Creek went right through her property and the other side was deep and it used to be the Arnold farm. She said when they bought their house they didn't know there was anything there and it hadn't been taken of. Ms. Erck said her concern was what was going to happen to the run off going towards the Bog Meadow Creek during construction. Ms. Erck didn't understand where they were going to put the septic and the leach field and not come into play with the Bog Meadow. She said they had a problem a few years ago when they had to put a new septic in. They had excavators come and the Town stopped them because they didn't have 100 ft. from Bog Meadow Creek. Ms. Erck

said their well was the opposite way and they stopped them in their tracks. She said DEC was there and the Army Core of Engineers was there, they had to get a million permits. Ms. Erck she was told they were going to condemn their house, because they only had 94 ft. to the Bog Meadow and not 100 ft. She said her question was where were they going to place the leach fields and septic tank so that it would not affect the Bog Meadow Creek. Ms. Marrano said she had shown the DEC that there was a septic system in place. She showed DEC all the information including pictures and they approved it. Mr. Ramsdill asked Ms. Marrano what she meant by in place, the proposed location or something that already exists. Ms. Marrano said it already existed. Chairman O'Brien asked if there was a house there previously. Ms. Marrano said there was. Mr. Mykins asked if there was a house there or was it just property being used. Ms. Marrano said there was a house. Chairman O'Brien asked a woman that wanted to speak to identify herself. She said she was Margaret Roosevear of 104 Ingersol Road. Ms. Roosevear explained that she had come to the town Hall earlier in the week to get a document with the property lines on it because she went over Bog Meadow Creek. She said her concern was she tried to do it by DEC and she was shut down. Ms. Roosevear said she couldn't even get close to that area. She said she walked down in that area and it was very flat and you couldn't even see the tributary. Ms. Roosevear said that she had been there since 1982 and they couldn't bring in anything to clear it up, clean it up, nothing. Ms. Roosevear said she was shut down and didn't think that was right. Mr. Mykins said Ms. Marrano was not in the wet lands. Ms. Roosevear said she knew that. Mr. Mykins said she was outside the wetlands. Ms. Roosevear said Ms. Marrano showed DEC pictures, to be there was different. Mr. Mykins said that was more of the construction side and permitting wise she was going to have to face those concerns. She would have to be so far from the slope to protect from any kind of erosion or run off. He said Ms. Marrano would have to come up with a storm water protection plan while she was constructing, until she has some kind of established vegetation. Mr. Mykins said those were the challenges that she would have to face during construction. He said at that moment she was in front of the Board to find out if she can place the there. Mr. Ramsdill asked if there were codes in the town that would to be followed to ensure pieces of this would perceive. Mr. Mykins said there were state codes that would have to be followed. Mr. Zabala said that even if the Board were to grant approval for the setbacks and the site was unable to meet the DEC codes then there would be no construction. Mr. Mykins said not necessarily just the DEC code there are state building codes that have to be met. Mr., Zabala thought the county would take a look at it again. Mr. Mykins probably not. Damon Erck of 362 Loudon Road said he worried about construction and traffic because he almost is hit every day going in and out of his driveway and he was at the bottom of the hill. He explained that they were going to be building on the S turn and going in out there would be difficult. Mr. Mykins said that those were challenges that the applicant would have to face during construction. Mr. Erck said the traffic there was horrendous. Mr. Ramsdill said that this sight already has an existing septic. Mr. Mykins said not anything that they had seen.

Mr. Zabala said the septic would need to meet the standards of DEC. Mr. Mykins said it would have to meet the standards of DOH. Mr. Ramsdill said their approval was saying that the Board felt the location would be sufficient and all the other permits and codes would have to be complied with. Mr. Mykins said correct and the Board was not giving her blanket permission to build the home they were giving her permission for side yard Area Variances and Buffer Variances to build within the 100 ft. buffer, which was required by the Town Code. Ms. Roosevear asked about her septic and leach fields. Mr. Mykins said the leach field was part of the septic and the size was based on the size of the home and the number of bedrooms and the design of the system.

Chairman O'Brien asked if there were any questions. Mr. Foehser asked if the county had any issues with it being so close to the boundary line. Mr. Mykins said no.

Mr. Zabala made a motion to approve Appeal No. 2016-14 of Catherine Marrano, 10 Raspberry Drive, Malta, N.Y. 12020. Request for Area Variances, Pursuant to Section 129-157B, 129 Attachment 8, Schedule B, for front yard setback, relief of 20 ft. and side yard setback, relief of 23 ft. To construct a single family home within 100-foot buffer of the Bog Meadow tributary, required in Section 129-198; property located at 366 Loudon Rd., Wilton, N.Y., 12866, Tax Map No. 154.-1-46, zoned R-2 in the Town of Wilton was 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 Variance because there are other single-family homes in the area, preliminary plans have been submitted to DEC and have not resulted in a negative determination. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by an Area Variance because DEC has designated the area they deemed acceptable with this lot. 3. The applicant has demonstrated that the requested Area Variance is not substantial because the home will not be too close to anything that is currently there and is acceptable to the DEC. 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 there are many single family homes nearby that do not create a problem and this proposed dwelling will not either. 5. The applicant has demonstrated that the alleged difficulty is self-created because she wants to put a home on the lot and seek our approval. [ADI]

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

ADJOURNMENT:

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

Dated: _____

BOARD OF APPEALS

BY _____

Amy DiLeone, Zoning Clerk

BY _____

Joseph O'Brien, Chairman