

**WILTON ZONING BOARD OF APPEALS
THURSDAY, June 25, 2020**

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, June 25, 2020 via a ZOOM webinar and was called to order by Vice Chairman Ramsdill at 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Vice Chairman Christopher Ramsdill, Robert Barrett, Jim Deloria, Scott Kingsley, Dean Kolligian, and Gerard Zabala. Also present were Mark Schachner, Town of Wilton Zoning Board of Appeals Attorney, Mark Mykins, Zoning Officer, Lisa Closson, Zoning Clerk, and Joshua Carlsson, ZOOM Meeting Coordinator.

ABSENT: Chairman O'Brien, and Jay Rifenbary, 1st alternate.

MINUTES: The minutes of the last meeting, held on May 28, 2020 were approved, as submitted, on a motion made by Mr. Barrett, seconded by Mr. Deloria. Roll call showed all board members were in favor.

CORRESPONDENCE: None other than what is presented before the board.

OLD BUSINESS:

EXTENSIONS: * **Special Use Permit Extensions Are Not Subject to Public Hearing.**

SUP NO. 1999-16 Richard and Kay Zwirn, 9 Taylor Road, Gansevoort, New York 12831. Request for the extension of a Special Permit, pursuant to Schedule B of the Zoning Ordinance, for a private stable; property located on Route 50 and Duncan Road, Tax Map Nos. 129.-1-56.2 and 129.-1-70.12, zoned R-2 in the Town of Wilton. Special Permit originally granted on July 22, 1999 for a period of two years, is due for review and extension.

Mr. Ramsdill read correspondence from Richard Zwirn, and asked if the Zwirns were present. They were present but had technical difficulties with ZOOM. Mr. Zwirn wanted his Special Use Permit to be extended for a period longer than two years since they have had this special permit for over 20 years. The Board asked Mr. Mykins if there has been any issue with the Special Permit, and Mr. Mykins responded that there has not been. Mr. Zabala made a motion to approve the extension of SUP No. 1999-16, Richard and Kay Zwirn, 9 Taylor Road, Gansevoort, New York 12831. Request for the extension of a Special

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Permit, pursuant to Schedule B of the Zoning Ordinance, for a private stable; property located on Route 50 and Duncan Road, Tax Map Nos. 129.-1-56.2 and 129.-1-70.12, zoned R-2 in the Town of Wilton, for a period of five years, and will be due for review and extension July 27, 2025. Mr. Barrett seconded the motion. All board members were in favor. The motion passed.

NEW BUSINESS:

Appeal No. 2020-04 Charles and Elaine Gerber, 40 Bullard Lane, Saratoga Springs New York, 12866. Request for an Interpretation of the Determination from the Code Enforcer; property located at 4281 Route 50, Saratoga Springs, New York 12866, Tax Map No. 141.-2-36, zoned RB-1 in the Town of Wilton.

Mr. Ramsdill recused himself from the hearing of Appeal No. 2020-04. The public hearing continued from the last meeting held on May 28, 2020. Mr. Kingsley asked if Mr. Wright was present to represent the applicants, Mr. and Mrs. Gerber. Mr. Gregory Teresi, one of John Wright's partners from Bartlett, Pontiff, Stewart, and Rhodes, was present on behalf of Attorney Wright. Mr. Kingsley asked Mr. Teresi to explain the appeal to the board since there were board members present that were not last month. Mr. Teresi presented the appeal. Mr. Teresi explained that the lot the Gerbers own is in an RB-1 Zone and was of a pre-existing nonconforming use. When the clients purchased the property there was a single family home, 1 mobile home, a second mobile home, and a mixed use building which had a 3 bedroom apartment, a commercial use, and an office space. In 2019, that mixed use building burnt down. The Gerbers are proposing to build a new building consisting of two 2-bedroom apartments and expand the office space. Mr. Teresi continued to explain that the Zoning Officer's determination states that each apartment is considered a use. He also stated that it is important to distinguish what the use is in total on that property, because we are not just looking at that building. In 1950, the mixed use building was 2,346 sq. ft., and Mr. Teresi said the Town Code (§129-109) allows for that building to expand 100 percent, with an application to build submitted within a year, and 2 years to complete it.

Mr. Zabala expressed he does not find language in the code stating that uses should also be doubled with the 100 percent expansion.

Mr. Teresi stated that there is ambiguity in the code distinguishing the expansion of the number of uses in an expansion.

Mr. Mykins spoke of code §129-170, which explains that in the case where two or more uses occur on a property, the area requirements for each use shall be combined to calculate total square footage required. In this case, if another apartment or business is added, then the uses increase on the property. He then added that there are variances on the property for when Curves for Women went in the building. Mr. Mykins interprets §129-109 as: if you increase the square footage by 100% and change an apartment from a two bedroom to a four bedroom, there is still only one apartment, one use, same as the office expansion, one Office is one use. He also explained that he believes that the code was written not to restrict each use from expanding, but to restrict the number of uses.

Mr. Teresi spoke again of ambiguity on the code, and it needs to be sided to the applicant. Mr. Schachner stated that he would have to disagree with the notion that it has to be black and white, and there is no room for interpretation without automatically going in favor

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with the applicant or property owner. The reason you have the ability to exercise your interpretation appeal authority is exactly because there are some grey area issues. He also stated that the applicant and Mr. Mykins explained their case competently, and counseled the board not to make a decision tonight and consider drafting a decision.

Mr. Teresi explained that there is nothing in the language of the statute that speaks of number of uses.

Charles Gerber, 40 Bullard Lane, Saratoga Springs, New York, 12866, explained that after the fire he contacted the building department with his new plan and was never told that the expansion does not pertain to the usage.

Mr. Mykins explained that when he met with Mr. Gerber, there was nothing mentioned of a second apartment and that there was business offices upstairs, and an expansion of the business on the bottom.

Mr. Zabala made a motion to close the public hearing. Mr. Kolligian seconded the motion. All board members present were in favor. The public hearing closed at 8:01 p.m. The board has 62 days from June 25, 2020, to make a decision.

Appeal No. 2020-13 Roger Goldsmith, 10 Poe Road, Saratoga Springs, New York 12866. Request for an Interpretation of §129-4 of the Zoning Ordinance; Property located at 4284 Route 50, Saratoga Springs, New York 12866, Tax Map No. 141.-2-12.2, Zoned RB-1 in the Town of Wilton.

Mr. Ramsdill recused himself from the hearing of Appeal No. 2020-13.

Mr. Kingsley read correspondence from Dione Ramsdill.

Roger Goldsmith read from correspondence that he had submitted for his presentation regarding his interpretation, §129-4 of Town Code, and retail as incidental to services. Mr. Mykins explained that if automobiles are being stored or brought in, or performance of any kind of operation on them, it would have to be treated as an Auto Repair shop.

Mr. Kingsley asked Mr. Goldsmith what part of his business requires NYS repair shop license.

Mr. Goldsmith explained that in order to do inspections, you have to be a licensed repair facility, and some of the products that will be sold, then installed, will fall under the category of repair, and that he was never told during the planning process that he would need Zoning Board approval.

Mr. Kingsley opened the public hearing at 8:15 p.m.

Dione Ramsdill, 4280 Route 50, Saratoga Springs, New York 12866, expressed her concerns regarding the appeal, and stated that a repair shop should not be approved in a zone that it is not allowed. She also asked if Mr. Mykins could clarify why this was classified as retail.

Mr. Mykins explained that Mr. Goldsmith spoke of selling accessories in his business, and putting the accessories on the motorcycles. He continued to say that Mr. Goldsmith was told on multiple occasions that a repair shop is not an allowed use, and the resolution from planning does state he has approval for a retail business.

Christopher Ramsdill, 4280 Route 50, Saratoga Springs, New York, 12866, expressed as a member of the public, that he thought the issue before the board is the interpretation of the Zoning Officer as to what the definition of retail encompasses, and does it include repair shop. He also explained that Planning cannot give a Use Variance, that would come from Zoning.

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Mr. Barrett questioned if the applicant is going to have the green NYS repair sign as well as the yellow NYS repair sign.

Mr. Goldsmith expressed that it is a requirement of NYS, that you are a repair station for inspections.

Mr. Mykins explained that on Schedule E, Attachment 11, Repair shop is not an allowed use in the RB-1 Zone, therefore he cannot provide a zoning letter stating it is an allowed use.

Mr. Goldsmith explained his services that would be provided are incidental to the retail.

Mr. Schachner spoke to the board about the complexity of this appeal and counseled the board to make two decisions upon this Interpretation; is repair an allowed use in the zone, and do the repair activities proposed fall under the characterization of retail incidental to services provided.

Mr. Goldsmith explained that it is stated that automotive repair is not an allowed use, but there is nothing stating motorcycle repair is not allowed.

Mr. Mykins said the definitions in code read motor vehicle repairs.

Mr. Kolligian made a motion to close the public hearing. Mr. Zabala seconded the motion. All board members present were in favor. The public hearing closed at 8:57 p.m. The board has 62 days to make a decision from June 25, 2020.

Mr. Zabala made a motion to uphold the Code Enforcement Officer's verbal determination that repair and service shops are not an allowed use in an RB-1 Zone. Mr. Kolligian seconded the motion. A roll call vote showed all board members in favor. The motion passed.

Mr. Kingsley questioned retail for inspections.

Mr. Mykins explained Best Buy installs products on automobiles, as they are incidental to retail, they do not provide inspections.

Mr. Goldsmith explained that he will not be a stand-alone repair shop, and will not be building motorcycles.

The board asked the applicant to provide a descriptive list of incidental services as they relate to the retail for his business. This application will be heard again at the next meeting.

Appeal No. 2020-08 Eric Hamel, 26 Cedarcrest Drive, Saratoga Springs, New York 12866. Request for an Area Variance pursuant to §129-157, C. (2), (a) of the Zoning Ordinance; property located at 26 Cedarcrest Drive, Saratoga Springs, New York 12866, Tax Map No. 154.3-2-18, zoned R-1 in the Town of Wilton.

Mr. Ramsdill re-entered the meeting and addressed Eric Hamel. Mr. Hamel explained his application. The board asked Mr. Hamel about the property behind him and the wall in his rear property, where he wants to place the pool.

Mr. Ramsdill opened and closed the public hearing at 9:29 p.m. due to lack of comment.

Mr. Zabala made a motion to approve Appeal 2020-08, Eric Hamel, 26 Cedarcrest Drive, Saratoga Springs, New York 12866. Request for an Area Variance pursuant to §129-157, C. (2), (a) of the Zoning Ordinance; property located at 26 Cedarcrest Drive, Saratoga Springs, New York 12866, Tax Map No. 154.3-2-18, zoned R-1 in the Town of Wilton, be granted in the amount of relief of 5 ft. rear setback 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

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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 pool will be mostly covered from view from the front by the home, and will be located in the middle of the yard away from both side neighbors by at least 75 feet on each side with trees serving as a barrier. There are also no neighbors behind our property to the rear, and the pool and lot are situated where it is mostly level, thus the pool will not be visible and there will not be any drainage concerns. 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 only other possible location for the pool would be in the side yard of the property which consists of an open grassy area and would be visible to neighboring properties. The applicant would like to minimize the visual aspects of the pool in the back yard. 3. The applicant has demonstrated that the requested Area Variance is not substantial because it consists of only 5 feet from the neighboring back property which is a vacant lot, and it is not a substantial amount. 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 the event the variance is granted, the property will not be modified to take advantage of said variance, and the above ground pool will already be installed in a an open area which is conducive to have a structure there already. 5. The applicant has demonstrated that the alleged difficulty is self-created because the applicant is putting in a pool that does not meet the setback. Mr. Kolligian seconded the motion. Roll call showed all were in favor. The motion passed.

Appeal No. 2020-09 Andrew Cuthbertson, 8 Waverly Place, Gansevoort, New York 12831. Request for an Area Variance pursuant to §129-157, Schedule A, R-1 district and §129-160 A. (8) of the Zoning Ordinance; property located at 8 Waverly Place, Gansevoort, New York 12831, Tax Map No. 127.12-4-5, zoned R-1 in the Town of Wilton.

Mr. Ramsdill addressed Andrew Cuthbertson. Mr. Cuthbertson explained his project. The board questioned how the shed would be placed in the rear without disturbing the trees in the cemetery buffer, and why so far back. Mr. Cuthbertson explained there is a trail on the left side of his property through the wooded area and that it is fairly clear in the area he is placing the shed.

Mr. Ramsdill opened and closed the public hearing at 9:51 p.m. due to lack of comment. Mr. Zabala questioned the cemetery buffer and if variances of this kind have been approved in the past and Mr. Mykins replied that there has been a variance like this in the past.

Mr. Kolligian made a motion to approve Appeal No. 2020-09, Andrew Cuthbertson, 8 Waverly Place, Gansevoort, New York 12831. Request for an Area Variance pursuant to §129-157, Schedule A, R-1 district and §129-160 A. (8) of the Zoning Ordinance; property located at 8 Waverly Place, Gansevoort, New York 12831, Tax Map No. 127.12-4-5, zoned R-1 in the Town of Wilton be granted in the amount of relief of 12 ft. north west side setback, and 60 foot encroachment upon the 100 ft. cemetery buffer, be 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 the applicants shed will not be unlike any other shed in the neighborhood, in fact

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it will be less obvious based upon placement of the far back corner of the property line, which took into consideration the number of trees and natural vegetation that would have to be disturbed. 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 remainder of the property in the back yard which may be a site for a pool in the future, and heavily wooded. The applicant took into consideration the amount of vegetation and trees to be taken down. If the shed had to be placed in an alternate location on the property, a number of trees and stumps would have to be removed. The removal of trees in an alternate location would have an undesirable effect on the natural appearance of the property and from the expense standpoint it would make the project less practical. 3. The applicant has demonstrated that the requested Area Variance is not substantial because it is a 20' x 12' shed which will be placed in an existing opening which is 8 feet from the side yard setback, which is required 20 feet, and 40 feet from a secondary boundary which is requiring a 100 ft. setback in a cemetery buffer. As indicated in the discussion, it was concluded that in another cemetery located within the Town of Wilton a previous applicant has also requested the same type of variances, which were granted by the board. 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 the proposed shed will be at the rear of the property in a heavily wooded area. At most, two small trees will have to be removed and the shed would blend in with the environment based upon the materials that would be used and the shed coloring. 5. The applicant has demonstrated that the alleged difficulty is self-created. Mr. Barrett seconded the motion. Roll call showed all board members were in favor. The motion passed.

Appeal No. 2020-10 Linda Kloss, 33 Pine Street, Corinth, New York 12822. Request for Area Variances pursuant to §129-157, §129-158, and Schedule C, R-3 district of the Zoning Ordinance; property located at 33 Corinth Mountain Road, Gansevoort, New York 12831, Tax Map No. 101.-1-66, zoned R-3 in the Town of Wilton.

Mr. Ramsdill addressed Linda Kloss. Ms. Kloss explained she would like to build a small single family home on the lot where a 1960 modular home used to be.

Mr. Ramsdill opened and closed the public hearing at 9:57 p.m. due to lack of comment.

Mr. Ramsdill explained that this lot is a pre-existing non-conforming building lot and that the lot is small.

Mr. Kolligian made a motion to approve Appeal No. 2020-10, Linda Kloss, 33 Pine Street, Corinth, New York 12822. Request for Area Variances pursuant to §129-157, §129-158, and Schedule C, R-3 district of the Zoning Ordinance; property located at 33 Corinth Mountain Road, Gansevoort, New York 12831, Tax Map No. 101.-1-66, zoned R-3 in the Town of Wilton, be granted in the amount of relief of 40 ft. south side setback, and 142.30 ft. rear setback relief 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 this will be a single family home built in an area where there are other single family homes as well. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than

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by Area Variances because the lot in question is a pre-existing nonconforming lot. 3. The applicant has demonstrated that the requested Area Variances are not substantial because the lot is pre-existing non-conforming, and the applicant will be building in like quality to the rest of the neighborhood. 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 area has other single family homes in it as well. 5. The applicant has demonstrated that the alleged difficulty is not self-created because the lot is a pre-existing non-conforming buildable lot. Mr. Zabala seconded the motion. Roll call showed all board members were in favor. The motion passed.

Appeal No. 2020-11 Alexander and Katherine Shmulsky, 2 Daffodil Drive, Saratoga Springs, New York 12866. Request for an Area Variance pursuant to §129-157 and Schedule A, R-1 district of the Zoning Ordinance; property located at 2 Daffodil Drive, Saratoga Springs, New York 12866, Tax Map No. 154.3-3-20, zoned R-1 in the Town of Wilton.

Mr. Ramsdill addressed Alexander and Katherine Shmulsky. Mr. Ramsdill read correspondence from Floral Estates, HOA. Mr. Shmulsky explained their project.

Mr. Ramsdill opened the public hearing at 10:10 p.m.

Christopher Mills, President of Floral Estates HOA, asked the board to consider the HOA request for the planting of trees. Mr. Ramsdill closed the public hearing at 10:16 p.m.

Mr. Zabala made a motion to approve Appeal No. 2020-11, Alexander and Katherine Shmulsky, 2 Daffodil Drive, Saratoga Springs, New York 12866. Request for an Area Variance pursuant to §129-157 and Schedule A, R-1 district of the Zoning Ordinance; property located at 2 Daffodil Drive, Saratoga Springs, New York 12866, Tax Map No. 154.3-3-20, zoned R-1 in the Town of Wilton, be granted in the amount of relief of 10 ft. south side setback 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 pool will not be visible from the road and the Wilton neighbors have a pool that will blend in aesthetically with other homes with pools in the 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 Variance because the applicants want the pool in the sunlight, to be private, and out of sight. 3. The applicant has demonstrated that the requested Area Variance is not substantial because they are requesting 10 ft. relief side setback, and the bordering lot is open space owned by the HOA. 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 10 feet is essentially the same location physically with no environmental differences. 5. The applicant has demonstrated that the alleged difficulty is self-created because the applicant wants to situate the pool to allow for more privacy.

In accordance with the wishes of the applicants, they will abide by the suggestions of the HOA of Floral Estates Board of Directors of the planting of trees to shield the view of the pool from the neighboring properties which happen to reside in the City of Saratoga

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Springs. Those plantings will be placed in the City of Saratoga Springs, and the pool will be placed in the Town of Wilton.

Mr. Kolligian seconded the motion. Mr. Deloria stepped out and did not vote upon this appeal. Roll call showed all board members present were in favor.

Mr. Kingsley made a motion to strike the HOA conditions from the approval. No one seconded the motion. The motion did not pass.

Appeal No. 2020-12 Steven Dougherty, 8 Donna Drive, Gansevoort, New York 12831. Request for an Area Variance pursuant to §129-157 and Schedule A, R-1 district of the Zoning Ordinance; property located at 8 Donna Drive, Gansevoort, New York 12831, Tax Map No. 128.5-1-9, zoned R-1 in the Town of Wilton.

Mr. Ramsdill addressed Steven Dougherty. Mr. Doherty explained his proposed addition. Mr. Ramsdill opened and closed the public hearing at 10:25 p.m. due to lack of comment. Mr. Kolligian made a motion to approve Appeal No. 2020-12, Steven Dougherty, 8 Donna Drive, Gansevoort, New York 12831. Request for an Area Variance pursuant to §129-157 and Schedule A, R-1 district of the Zoning Ordinance; property located at 8 Donna Drive, Gansevoort, New York 12831, Tax Map No. 128.5-1-9, zoned R-1 in the Town of Wilton be granted in the amount of relief of 9.20 ft. east side setback 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 will be built beautifully. 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 only location for the front entrance of the home is in the current location. The applicant is proposing to renovate and enhance the front of his property. 3. The applicant has demonstrated that the requested Area Variance is not substantial because they are requesting 9.2 ft. relief on the east side setback of the property. 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 this proposed addition will add to the character of the home and to the structure itself. 5. The applicant has demonstrated that the alleged difficulty is self-created. Mr. Barrett seconded the motion. A Roll call showed all board members were in favor.

Adjournment:

Mr. Barrett made a motion to adjourn. Mr. Kingsley seconded the motion. All were in favor. The meeting was adjourned at 10:30 p.m.

Dated: July 8, 2020

BOARD OF APPEALS

BY _____

Lisa Closson, Zoning Clerk

BY _____

Christopher Ramsdill, Vice Chairman