

TOWN OF HYDE PARK

Zoning Board of Appeals

4383 Albany Post Road

Hyde Park, New York 12538

Minutes

January 24, 2018

Present: John Bickford, Chair
Herbert Sweet
Brendan Lawler
Neil Krupnick
James Agrawal

Absent:

Others Present: Kathleen Moss, Zoning Administrator, Victoria Polidoro, Attorney, Patrick Logan, Law Clerk, Warren Replansky, Attorney, Linda Weiner, ZBA Secretary

John Bickford, Chair, welcomed everyone to the January 24, 2018 meeting at 7:00 P.M.

Mr. Bickford commenced the Pledge of Allegiance

The secretary was asked to note the roll.

The next meeting will be February 28, 2018

Mr. Bickford there were two minor changes to the Agenda. First would be appointment of Vice-Chair

Mr. Bickford asked for a nomination to appoint Herbert Sweet as Vice Chair of the Zoning Board.

Motion made by Brendan Lawler, seconded by John Bickford

VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

Mr. Bickford announced that the Hughes application was going to be moved up on the Agenda so the attorneys could be released from the meeting.

New Application:

#17-20Z

Janet Hughes

531 Creek Rd

Poughkeepsie, NY 12601

Appeal – Section 108-33.4A Appellate Jurisdiction regarding notice of violation dated October 20, 2017

Jon Adams, Corbally, Gartland & Rappleyea LLP, gave the presentation for Janet Hughes. Mr. Bickford asked what exactly are they asking for and what is the basis of the request.

Mr. Adams referenced the Order to Remedy received by his client from Kathleen Moss, Zoning Administrator deems the current use of the property to be an illegal use and has directed his client to return it to a use that conforms to the current regulations in the Greenbelt District.

Mr. Adams said Mrs. Moss is contending the third dwelling in each building is an illegal and that the two separate buildings on the property, each of those has three living units. His understanding is that the third unit in each of the two buildings is not a legal use and Mrs. Moss wants the client to discontinue the third use and to use the property as two family houses. Mr. Adams said it's their contention that given the matter in which the appeal was written, the use to which his client is using it as three units in the two buildings, is a valid nonconforming use as the term is used in the Zoning law and they are entitled to continue the use under the provision that protects nonconforming uses.

Mr. Adams said it's his belief the way the letter was drawn, was that he needs to establish a legal nonconforming use prior to the adoption of the Greenbelt regulations which are referenced in the Order to Remedy. Victoria Polidoro asked Mr. Adams that basically what he's saying is that two-three family dwellings is a legal nonconforming use which is the basis of what he is asking for. Mr. Adams confirmed that was correct.

Victoria Polidoro added that the burden of proof is on the applicant to demonstrate the legality of the two-three family homes. She recommended that it was in the Town's best interest to proceed with the application.

Warren Replansky, Attorney stated he was present to represent Kathleen Moss, Zoning Administrator It as their understanding that it was three family and four family. Mr. Bickford pointed out that the Notice of Violation says four units were observed in the rear and three were observed in the front. Mr. Adams said he would verify.

Mr. Replansky said it was the Town's position that the real substance of the complaint is that premises are being occupied without a valid Certificate of Occupancy. It would have to be established that it's a legal nonconforming use.

Mr. Replansky asked Mr. Adams if he was going to supplement the appeal with additional documentation if he would submit the paperwork two weeks prior to the hearing date.

Mr. Replansky thanked the Board for allowing the Hughes application be moved up on the Agenda.

Motion made by Brendan Lawler, seconded by Herbert Sweet to set public hearing February 28, 2018.
VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

New Public Hearing:

#17-16Z

Dorinda Bolander
309 Netherwood Rd.
Hyde Park, NY 12538

Use Variance – Section 108-5.14 Changing from multiple dwelling “not permitted” to “permitted”, to allow the establishment of one three-family dwelling on a lot in the Greenbelt District.

Motion made by Brendan Lawler, seconded by Herbert Sweet to open the public hearing.
VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

Dorinda Bolander, Executor for the estate, read the statement which explained the purpose of her application. She stated a three family is the only option that would work. She discussed her financial analysis and rate of return. She gave a history of the property and quoted several options that wouldn't be acceptable.

Brian Baker, Attorney, stated approving the variance for a three family dwelling would be good for the town. He said the request is for a relatively moderate change with no impact. The applicant isn't looking to set a precedent. Looking at everything presented, it would beseech the Board to grant the request to turn this into a three family.

John Bickford pointed out that in order to prove an unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under this chapter, applicable to the particular district where the property is located. (1) The applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by confident financial evidence. (2) The alleged hardship relating to the property is unique and is not applied to a substantial portion of the district or general neighborhood. (3) The requested use variance if granted will not alter the essential character of the neighborhood. (4) The alleged hardship was not self-created.

It's incumbent is on the applicant to address each one of the four items listed. The Board has to vote affirmative on each of the items.

Herbert Sweet said the requirements for a Use Variance is state dictated.

Kevin Pellon, DSB Plus LLC, asked for clarification regarding rate of return.

John Bickford suggested the applicant look at the Code for a permitted use variance in the Greenbelt District.

Victoria Polidoro, Attorney, and Board members discussed ways to show rate of return and where to look for the information. She suggested the applicant check the Town Code definitions. The basis of analysis can't be based on emotions.

Neil Krupnick said more numbers and concrete possibilities are needed.

Victoria Polidoro said the applicant needs to explain why the Board should consider it one way or the other.

Mr. Agrawal suggested looking at other locations where other possibilities could be unique.

Mr. Pellon answered that lots of possibilities have been explored. They will backtrack and make sure they have a way to convey their information.

Motion to continue the public hearing on February 28, 2018 made by Brendan Lawler, seconded by Neil Krupnick
VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

#17-19Z

Dorinda Bolander
309 Netherwood Rd
Hyde Park, NY 12538

Area Variance – Section 108-5.15 Changing maximum average density from 2.5 acres per dwelling to 2.56 acres for 4 dwellings in the Greenbelt District.

Motion to open the public hearing made by James Agrawal, seconded by Brendan Lawler
VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

Motion made to continue the public hearing on February 28, 2018 made by James Agrawal, seconded by Brendan Lawler

VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

#18-01Z

Mark Laurange
30 Putnam Rd
Hyde Park, NY 12538

Variance -Section 108-5.15 changing rear yard setback from 30 ft. to 8 ft. and side yard setback from 20 ft. to 19 ft. for an existing pool; and **Section** 108-5.15 changing rear yard setback from 30 ft. to 20 ft. for an existing three season room; and **Section** 108-5.15 changing side yard setback from 20 ft. to 13 ft. 7 in. for existing deck stairs in the Neighborhood District.

Motion to open the public hearing was made by Brendan Lawler, seconded by Herbert Sweet

VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

Mark Laurange was present to answer questions regarding the application. He wants to sell the house and needs variances to clear violations.

John Bickford explained the variance process and how it works.

Herbert Sweet questioned measurements for the rear yard setback. It was agreed that the measurement be changed to read 8 ft. 1 in.

Mr. Bickford asked if anyone had any comments.

Barbara Sweet, 6 Covey Rd., Hyde Park, noted that they're making a decision what one person wants without the owner not being there and no proof of what the owner wants. She asked if they would make sure that's what the owner of record wants.

The Board verified there was a letter stating the applicant had permission to represent.

Motion to close was made by Brendan Lawler seconded by Neil Krupnick to close the public hearing.

VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

**TOWN OF HYDE PARK
Zoning Board of Appeals**

VARIANCE RESOLUTION

Application #: 18-01Z

Grid #: 6264-01-003577

Introduced by: Herbert Sweet

Date: January 24, 2018

Seconded by: James Agrawal

The Town of Hyde Park Zoning Board of Appeals, at a meeting duly convened on January 24, 2018 reviewed the facts in Application #18-01Z as submitted by Mark Laurange, 30 Putnam Rd. Hyde Park, NY 12538

WHEREAS, the application was determined to be an Type II Action under Section 6NYCRR Part 617 and Section 54-7 of the Code of the Town of Hyde Park, and

WHEREAS, said application requests a variance or adjustment to the strict application of the Zoning Code, specifically regarding a

Variance -Section 108-5.15 changing rear yard setback from 30 ft. to 8 ft. 1 in. and side yard setback from 20 ft. to 19 ft. for an existing pool; and **Section 108-5.15** changing rear yard setback from 30 ft. to 20 ft. for an existing three season room; and **Section 108-5.15** changing side yard setback from 20 ft. to 13 ft. 7 in. for existing deck stairs in the Neighborhood District.

WHEREAS, the Board held a Public Hearing, notice of which was duly published in the Poughkeepsie Journal on January 15, 2018 and posted as required by law, and

WHEREAS, at said Public Hearing all who desired to be heard were heard and their testimony recorded, and

WHEREAS, all testimony has been carefully considered and the following pertinent facts noted:

1. The lot is small at .37 acres
2. The structures for which area variances are being requested are already in place
3. The structures for which the area variances are being requested are appropriately placed and reasonable alternate locations do not exist.

NOW. THEREFORE BE IT RESOLVED by the Zoning Board of Appeals, that Application #18-01Z a request for a variance from Section 108, as set forth above, be **granted** on the following grounds:

1. The variance requested **will not** produce an undesirable change to the character of the neighborhood or a detriment to nearby properties as pools and three-season rooms are common structures in the neighborhood.
2. The needs of the applicant **can not** be achieved by other than an area variance as there are no other appropriate locations for the structures.
3. The requested variance **is** substantial numerically but not in impact.
4. The requested variance **will not** affect the physical or environmental conditions in the neighborhood.
5. The hardship for which the variance is sought to rectify **was** self created.
6. The variance being granted is the minimum variance to meet the needs of the applicant.

Adopted: **January 24, 2018**

Brendan Lawler	AYE
Herbert Sweet	AYE
Neil Krupnick	AYE
James Agrawal	AYE
John Bickford	AYE

:lw

Secretary: _____
Linda Weiner

#18-02Z

Jesse Cutaia
For/ Quick
5 Phillips Dr
Hyde Park, NY 12538

Variance – Section 108-4.3G(2) To allow construction within the 100 ft. stream corridor changing the undisturbed corridor from 100 ft. to 75 ft. for construction of a solar array in the Neighborhood District.

Motion to set public hearing for February 28, 2018 made by Herbert Sweet, seconded by Neil Krupnick
VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

Other Business:

Return Escrow: Whitman
Creek Park

Motion was made by Brendan Lawler, seconded by Herbert Sweet to release escrow for Whitman and Creek Park, Inc.
VOICE VOTE – ALL IN FAVOR

(5) AYE (0) NAY (0) ABSENT – MOTION CARRIED

RELEASE OF ESCROW

January 24, 2018
Resolution # 18-AZ

Moved By: Neil Krupnick
Seconded by: Herbert Sweet

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Hyde Park does hereby request that the Town Board authorize that the following escrow accounts be released:

PROJECT NAME		PROJECT #	ENGINEER/ PLANNER	ATTORNEY	TOTAL
Kathryn Whitman	PO Box 403 Staatsburg, NY 12580	17-10Z		3,131.00	3,131.00
Creek Park, Inc.	680 Sergeant Way, #1 Wappingers Falls, NY 12590	17-17Z		762.00	762.00

The Board was polled as follows:

Brendan Lawler	AYE
Herbert Sweet	AYE
Neil Krupnick	AYE
James Agrawal	AYE
John Bickford	AYE

Linda Weiner, Secretary

Motion to approve minutes for December 27, 2017 was made by Brendan Lawler, seconded by John Bickford.
VOICE VOTE – ALL IN FAVOR

(3) AYE (0) NAY (0) ABSENT (2) ABSTAINED – MOTION CARRIED

Motion was made by Herbert Sweet, seconded by Herbert Sweet to adjourn at 8:40 P.M.
VOICE VOTE - ALL IN FAVOR

(5) AYE (0) ABSENT (0) NAY – MOTION CARRIED

Respectfully Submitted,

Linda Weiner
Secretary