**ZONING BOARD OF APPEALS**

**TOWN OF LEWISBORO**

**MINUTES**

Minutes of the Meeting held by the Zoning Board of Appeals on Wednesday, June 27, 2018 at 7:30 P.M., at the Town of Lewisboro Offices at Orchard Square, 79 Bouton Road, South Salem, New York.

Board Members: Present: Robin Price, Jr. Chairman

 Thomas Casper

 Carolyn Mandelker

 Jason Krellenstein

 Absent: Todd Rendo

Also Present: Aimee Hodges, Secretary

 Joseph Angiello, Building Inspector

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The Meeting was called to order at 7:30 P.M. Chairman Price introduced the members of the Board and noted the emergency exits. He announced that the next ZBA meeting is scheduled for Wednesday, July 25, 2018 with a site walk scheduled for Saturday, July 21st.

**I. Review and adoption of the Minutes of March 28, 2018**

Mr. Krellenstein moved to adopt the minutes of March 28, 2018. The motion was seconded by Mr. Casper; To approve: Mr. Krellenstein, Chairman Price, Mrs. Mandelker and Mr. Casper. Absent: Mr. Rendo.

**II. PUBLIC HEARINGS**

# CAL. NO. 09-18-BZ

## **Application of Mark Krantz, (Mark Krantz & Sandra Smith, owners of record) 68 Ridgefield Avenue, South Salem, New York, for a variance of Article IV § 220-23D (11) of the Zoning Ordinance in the matter of the as-built reconstruction of an accessory building (20’ x 26’ 2-story garage) total floor area in excess of 600 square feet (845 square feet) in an R-2A, Two-Acre Residential District.**

## **The property is located on the northwest side of (#68) Ridgefield Avenue, designated on the Tax Map as Sheet 29, Block 10553, Lot 17, in an R-2A, Two-Acre Residential District consisting of approximately 5.43 acres.**

Mark Krantz and Sandra Smith were present.

There were no objections to the notice of public hearing as published in the official Town newspaper.

The Chairman advised that the four Board members present this evening visited the site on Saturday, June 23rd. This matter is before the Board this evening for a variance because the garage was reconstructed after the original building was demolished by a tree. The second floor was finished and the area was now counted as floor area bringing the total area over 600 s.f. The garage was built on the same footprint as the original and did not require any setback variances.

Mrs. Mandelker questioned what the applicant intended to do with the second floor.

Ms. Smith advised that the house is currently for sale and they believed that this area would provide a desirable recreation space for the next owner, as a similar space had for their children. The previous building was a full two-story structure with an unfinished second story. The reconstructed building is one and one-half story; the upper story is finished.

Mr. Krantz advised that although there is electricity, there is no plumbing.

In response to a question of Mr. Casper, Mr. Angiello explained that this space would not be considered habitable space because it is not heated. The code though considers the total floor area, not the habitable space of the accessory building. It has been the practice of this Building Department to consider the floor area where the overall ceiling height is seven feet. Sloped ceilings no less than five feet are also taken into consideration. If the collar ties were much lower, there would not be a need for a variance.

Mrs. Mandelker questioned whether this could be converted into an accessory apartment and was advised that if a building permit was applied for, a subsequent owner could convert this space.

Mr. Krellenstein stated that although this was an as-built situation, he was not troubled by this application given that the property owners had explained that the second story of the garage was finished by the contractor without their knowledge. The building was reconstructed on the original footprint, the second story has useable, but not habitable space, and it would not disturb the neighboring property owners, and is a modest accommodation.

There were no public comments.

Mr. Krellenstein moved to approve the application as noticed for the following reasons:

* There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
* The requested variance is not substantial.
* There is no practical alternative to the variance.
* There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.
* The Board found that the difficulty may have been self-created, but the building is smaller than the previous garage.

The motion was seconded by Chairman Price; To Approve: Mr. Krellenstein, Chairman Price, Mrs. Mandelker and Mr. Casper. Absent: Mr. Rendo. To Deny: None.

# CAL. NO. 10-18-BZ

## **Application of Jessica Condon and Michael Dooley, 184 Elmwood Road, South Salem, New York, for a [1] a variance of Article IV § 220-23E and [2] Article IV § 220-23D(11) of the Zoning Ordinance in the matter of the construction of an accessory building [pole barn] that is closer to the side property line (25’ where 40’ is required) and that is over 600 square feet in total floor area (proposed 720’ square feet) in an SCR-2A, Special Character Two Acre Residential District.**

## **The property is located on the west side of (#184) Elmwood Road, designated on the Tax Map as Sheet 47, Block 10056, Lot 29, in an SCR-2A, Special Character Two-Acre Residential District consisting of approximately 3.3 acres.**

Jessica Condon was present.

There were no objections to the public notice as published in the official Town newspaper.

The Chairman advised that the Board members walked this property on Saturday, June 23rd and had some questions as to whether the barn could be moved further into the lot to alleviate the setback issue.

Ms. Condon advised that this was not a request that they were making arbitrarily, but rather one that was made after a lot of consideration. The fifteen feet would make a big difference for the horse that she has had for the past sixteen years and would like to bring home. She noted two apple trees on the property which would provide a delineating line for the paddock because of the way the water flows. She noted that the area around their residence is saturated and they do not want the horse turning up their backyard. She further noted the location of the septic fields, another location that they did not want the horse to walk on.

Ms. Condon advised that her horse suffers from poor circulation and if he gets a scratch or bug bite he gets an infection that can be costly to treat or is life threatening if it is not caught early. To avoid this, they need to keep him moving and as dry as possible. By positioning the barn 25 feet from the property line they are able to maximize the area, keep the barn and his legs as dry as possible and set up a strategic “track” system around the yard to keep him moving in the paddock. Moving the barn in will cut into the track system which she believed will encourage him to move as much as possible.

In response to a question of Mr. Krellenstein, Ms. Condon advised that her property included an additional acre beyond the stonewall. He agreed that the property to the southwest is slightly sloped.

Keith Martin, 178 Elmwood Road advised that his property is immediately north of the property in question. Mr. Martin reviewed the correspondence dated June 27, 2018 submitted to the Board this evening, summarizing his concerns. Understanding that the wetland issues were not within the purview of this Board, he asked though that the Board take note of location of the wetlands on his property shown on the map he provided, which were mapped as a result of the construction of his home on 2008. Because there had been no proposed improvements on the applicant’s property wetlands are not shown on her survey. He believed that because the properties share a pond and a stream that runs through both, there may be an area of her property where the Code would prevent the keeping of her horse. He advised that he had spoken with the Town’s wetland inspector who had requested that Ms. Condon obtain a wetland delineation.

In response to a question of Mr. Casper, Mr. Angiello explained that when an application is submitted, an environmental questionnaire is forwarded to the Wetland Inspector who looks at the property. The building department reviews the application for code compliance. It is possible that even if this Board grants a variance that the barn could not be built.

Mr. Angiello read into the record §217-5A (4), Prohibited activities in the Town’s Wetland Regulations: “Animal feed lots or pens or manure storage within a wetland, watercourse or buffer area.”

Ms. Condon advised that she was working with the Town to get the surveys done. She further advised that the manure would be carted off.

In response to Mr. Casper’s question regarding the number of horses permitted on the property, Mr. Angiello advised that even if the code only permitted two horses, there is nothing that would prevent a three stall barn from being constructed. One of the stalls could be used as a tack room or storage.

Mr. Krellenstein believed that the most compelling issue discussed was that of the wetlands requirements. He suggested that the Board wait before making a decision in order to understand what space they are actually working with.

Chairman Price noted that they could still build the barn even if they could not house the horse.

Ms. Condon stated that even if they could not have the horse, they would still want this space for the storage of equipment and as a work shop.

Mr. Krellenstein stated that was a fair point, but the argument given for the location proposed in the zoning setback centered around the horse. If the horse is not permitted in this area, the case for the variance becomes different and believed that it would be better for this Board to understand fully what she is working with in terms of dimensions.

Chairman Price suggested that this matter be tabled this evening. This matter can be reconvened after the wetland mapping is completed.

# CAL. NO. 11-18-BZ

## **Application Janet Faso (Frank Faso & Janet Label-Faso, owners of record), 161 Main Street, South Salem, New York, for a variance of Article IV § 220-23E of the Zoning Ordinance in the matter of the installation of a generator that is proposed to be located closer to the side property line (26’ where 30’ is required) and the installation of propane tanks that are proposed to be installed closer to the side property line (11’ proposed where 30’ is required) in an R-1A, One Acre Residential District.**

## **The property is located on the southeast corner of Main Street and Boway (#161 Main Street), designated on the Tax Map as Sheet 37, Block 10809, Lot 4, in an R-1A, One-Acre Residential District consisting of approximately .44 acres.**

Emily Riddick was present representing the applicant.

There were no objections to the notice of public hearing as published in the official Town newspaper.

The Chairman advised that the Board visited the site on Saturday and had some questions about the tanks.

Ms. Riddick explained that they were proposing four 120 gallon propane tanks rather than one 500 gallon tank because of the difficulty accessing the site with a truck to install the tanks and fill them. She advised that the septic system was located in the rear of the property and there is a slope in the front of the house.

Mr. Casper stated that the Board believed that they could go over the driveway, but was advised by Ms. Riddick that it had been concluded by the propane company and the generator contractor that this would be too dangerous. The only other option was to install the 500 gallon tank in the middle of the front walk. The tanks as proposed would be screened and not be visible from the road.

There was a brief discussion regarding whether the Board could accept the four smaller tanks versus the one larger 500 gallon tank. Ms. Riddick advised that the thinking was that the contractor could carry in the four smaller tanks rather than risking having to truck in the one larger tank.

Mr. Casper moved to approve the application subject to the condition that the applicant install sufficient screening all around the four 120 gallon propane tanks as noticed for the following reasons:

* There is no undesirable change to the character of the neighborhood or detriment to nearby properties given that the tanks would be sufficiently screened from the road and adjacent properties.
* The requested variance is not substantial.
* There is no practical alternative to the variance.
* There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood.
* The Board found that the difficulty may have been self-created, the Board found that there would not be an impact to the neighborhood.

The motion was seconded by Mr. Krellenstein; To Approve: Mr. Krellenstein, Chairman Price, Mrs. Mandelker and Mr. Casper. Absent: Mr. Rendo. To Deny: None.

# CAL. NO. 12-18-BZ

## **Application of Lazy River Trust, Matt Lichenberg as Trustee, 110 North Salem Rd, Cross River, New York, for a variance of Article IV § 220-23D (11) of the Zoning Ordinance in the matter of a proposed second story studio/bedroom addition to an existing accessory building (22’ x 32’ garage) total floor area in excess of 600 square feet (1408 square feet proposed) in an R-4A, Four-Acre Residential District.**

## **The property is located on the west side of (#110) North Salem Road, designated on the Tax Map as Sheet 16, Block 10533, Lot 113, in an R-4A, Four-Acre Residential District consisting of approximately 13.35 acres.**

David Graham, Architect was present.

There were no objections to the notice of public hearing as published in the official Town newspaper.

Mr. Graham displayed a Google Earth map of the site. In response to a question of the Board during the site visit, he also provided a drawing showing the relationship between the roof peak between this building and the residence; the peak of the roof of this building is five feet above the existing roof line.

Mr. Graham noted that this is a 13.35 acre flag lot located within the R4A zoning district. The garage is 1000 feet from the street and 500 feet from the closest neighbor and is set into a hillside appearing as a one story building when you approach it in an effort to mitigate the visual impact. There is no environmental impact as there is no increase to the footprint of the garage. He advised that because a kitchenette is proposed for the space to be used as a writer’s studio and a mother-in-law apartment, the septic system is being increased. The main residence was built in 1979 and has been increased from 3400 sf to 5400 sf. Previously there was an apartment over an attached garage, which has been removed.

In response to a question of Chairman Price, Mr. Graham advised that the existing building also built in 1979 is 704 sf. There is storage space in the existing second story; about one-half of the area is greater than five feet. The ceiling height is being raised an additional three feet and will be habitable space.

Chairman Price observed that the increase of non-conformity over what currently exists is an additional 400 sf taking into consideration the square footage in the existing second story storage area.

Mrs. Mandelker stated that she had no issue with this application, it is not visible to any of the adjacent properties and will not have any impact.

Mr. Krellenstein agreed noting the size of the property and the distance of the building to the road.

Mr. Graham advised that the intention of his client was to have the building to appear smaller than it is.

There was no public comment.

Mr. Casper moved to approve the application as noticed for the following reasons:

* There is no undesirable change to the character of the neighborhood or detriment to nearby properties.
* The requested variance is not substantial. The applicant is proposing to increase the non-conformity an additional 400 s.f.
* There is no practical alternative to the variance.
* There will not be an adverse effect or impact on the physical or environmental condition of the neighborhood. The large flag lot is over 13 acres and the building is located 1000 feet from the road and 500 feet from the neighboring properties.
* The Board found that the difficulty may have been self-created, but would have no impact on the neighboring properties.

The motion was seconded by Mrs. Mandelker; To Approve: Mr. Krellenstein, Chairman Price, Mrs. Mandelker and Mr. Casper. Absent: Mr. Rendo. To Deny: None.

**IV. CORRESPONDENCE & GENERAL BUSINESS**

Mr. Krellenstein moved to adjourn the meeting at 8:32 P.M. The motion was seconded by Mrs. Mandelker.

Respectfully submitted,

Aimee M. Hodges

Secretary, Zoning Board of Appeals