

TOWN OF _____ ZONING BOARD OF APPEALS

RESOLUTION DENYING AREA VARIANCE # _____

WHEREAS, _____ (the "Applicants") are proposing to replace an existing seasonal residence on property located at _____ (the "Project") and have applied to the Town of _____ Zoning Board of Appeals ("ZBA") for area variances of 4.6' from the rear yard setback and 1.5' from the side yard setback requirements of Section 175-16 (Schedule II) of the Town Zoning Law; and

WHEREAS, the ZBA believes that the existing structure, including the two decks, has received all necessary permits and approvals from the Town; and

[WHEREAS, as required by General Municipal Law Section 239-m, the variance application was referred to the _____ County Planning Board for its review and at its meeting on _____ the County Planning Board voted to recommend _____ of the variance; and]

WHEREAS, the ZBA (1) conducted a public hearing on _____ for the previous variance application for the property submitted by _____ (" _____"), (2) reviewed a smaller proposal for the property which was presented by _____ on behalf of the Applicants on _____ and (3) conducted a public hearing on the current application submitted by the Applicants on _____, which was continued to this meeting; and

WHEREAS, Town of _____ Planning Board approval will be required for the Project; and

WHEREAS, the ZBA has reviewed, considered and deliberated about the variances requested and the written and verbal comments received in connection with the variance application;

NOW, THEREFORE, BE IT

RESOLVED, that the ZBA hereby determines that the application does not meet the requirements set forth in Section 175-95(C)(3) of the Zoning Ordinance for issuance of an area variance as further discussed below.

1. An undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of the area variances. The variances would permit expansion of the footprint of the structure by 130 square feet by squaring off the northwest corner. The 130 square foot increase would result in an approximately 16% increase in the footprint of the living area from 810 square feet to 940 square feet. The usable square feet of the residence would be further expanded by adding a 650 square foot basement area below a portion of the ground level structure within both the existing footprint and the expansion area, for a total expansion of indoor living space of approximately 90%. This would also result in an increase of almost 3' in height from the existing single story structure. The structure would be significantly different in appearance from the typical single story residences in the neighborhood both in terms of height and bulk. Although the number of bedrooms identified on the plans would remain at two, the room in the new basement area identified as a family room could easily be used as an additional bedroom, particularly with the second bathroom added in the basement area. This could result in an increase in use of the structure. Therefore, the requested variances would produce an undesirable change in the character of the neighborhood in terms of visual impact, overall compatibility with other residences and intensity of use.
2. The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. The applicant seeks to increase the size of the two bedrooms and add a second bathroom and closets. These goals could be accomplished by adding a new basement area under only a portion of the existing structure without squaring the corner or increasing the footprint in any way. This would eliminate the need for the requested variances.
3. The requested area variances are substantial. The variances for the new portion of the structure are 12% from the rear setback requirement and 10% from the side setback requirement. Although these do not seem to be substantial numerical percentages, the actual effect would be substantial in light of the fact that the existing structure is not in compliance with setback requirements. In fact, it is less than five feet from one of the side property lines. Although the variances do not appear to be substantial in terms of numerical percentage of required setback, they would be substantial in terms of practical effect.

4. The proposed variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Although the number of rooms identified as bedrooms would remain at two, the room identified as a family room could easily be used as a bedroom, particularly with the addition of the second bathroom in the new basement area. This would result in increased intensity of use of the residence. The variances would allow a 130 square foot increase in the footprint of the structure, which means that the impervious surfaces on the lot could be increased by that amount. This could increase stormwater runoff from this small site and negatively impact the nearby stream. The existing septic system is sized appropriately for a two-bedroom residence. However, if the family room were used as another bedroom it would not be adequate. Therefore, there could be an impact to groundwater as a result of the proposed variances.

5. The alleged difficulty is largely self-created. The property was the subject of a similar area variance application submitted by the previous owner at the time the Applicants purchased the property. The Applicants were fully aware of the existing variance application and authorized the previous owner to continue to pursue the variances on their behalf. Therefore, the Applicants were well aware of the need for variances before they bought the property.

6. The proposed variance is not the minimum variance that is necessary and adequate to achieve the applicant's goal and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. A smaller variance which did not fully square off the corner could achieve the Applicants' goals and would reduce potential impacts of the Project. As discussed above, the applicant's goals could be achieved with no increase in the footprint of the structure.

7. The benefit to the applicant if the variances are granted is outweighed by the potential detriment to the health, safety and welfare of the neighborhood or community. As discussed above, granting the variances would have a significant impact on the neighborhood character as the height, footprint and bulk of the structure would be increased. There could be an increase in the intensity of use of the residence if the family room were used as a third bedroom. This could result in environmental effects because the septic system is appropriate for a two-bedroom residence but inadequate for three bedrooms. In addition, the increased footprint would result in additional impervious surfaces which could result in impacts from increased stormwater runoff. Although granting the

variances would increase the Applicants' enjoyment of their property as a result of larger bedrooms, an additional bathroom and closets, the benefit to the Applicants is determined to be outweighed by the potential detriment to the community.

FURTHER RESOLVED, that the ZBA therefore denies the requested area variances.

Duly adopted this ____ day of _____, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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