

**TOWN OF ULYSSES
BOARD OF ZONING APPEALS
FINAL MINUTES
Wednesday, December 18, 2019**

Approved: June 17, 2020

Present: Board Chair Bob Howarth, and members Thomas Butler, Steve Morreale, and Cheryl Thompson; Town Planner John Zepko.

Andy Hillman and David Tyler were excused.

Public in Attendance: David Wilcox, Joel Podkaminer, David Kooperman, Linda Liddle, and Terry Carroll

Call to Order: 7 p.m.

Meeting Minutes (10/30/19; 11/20/19)

Mr. Howarth MADE the MOTION to accept the October 30, 2019 meeting minutes, and Mr. Morreale SECONDED the MOTION. The minutes were unanimously accepted, 4-0.

Mr. Howarth MADE the MOTION to accept the November 20, 2019 meeting minutes, and Mr. Morreale SECONDED the MOTION. The minutes were accepted, 3-0, with Ms. Thompson abstaining from the vote.

Public Hearing – Appeal by David and Beth Wilcox, for an area variance from Section 212-40 E. (Front Setback Requirement of the R1 zone), of the Town of Ulysses Zoning Law, for the purpose of permitting an addition 41 feet from the Northern property line where 50 feet is the required front yard setback. The property is located at 3489 Jacksonville Road, Tax Map # 35.-2-3

Mr. Wilcox intends to build a covered, wheelchair-accessible ramp.

The Town received no correspondences regarding this project.

Resolution

Mr. Morreale MADE the MOTION to take action on the Wilcox resolution, and Mr. Butler SECONDED the MOTION as follows:

Whereas, the appeal by David and Beth Wilcox, for an area variance from Section 212-40 e. (Front Setback Requirement of the R1 zone), of the Town of Ulysses Zoning Law at the property located at 3489 Jacksonville Rd, Tax Map # 35.-2-3; and

Whereas, the relief requested is for the purpose of permitting an addition 41 feet from the Northern property line where 50 feet is the required front yard setback; and

Whereas, the action is a Type II action under SEQR 617.5(c)(16) “granting of individual setback and lotline variance...” and requires no further review; and

Whereas, by considering the five statutory factors, the BZA reviewed the record and weighed the benefits to the Applicant against the detriment to the health, safety and welfare of the neighborhood if the variances are granted. The benefit sought by the applicant is for the purpose of permitting the construction of a covered porch and ramp to the front of the home, 41 feet from the front property line where 50 feet is the required setback.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances.

No undesirable changes to the character of the neighborhood are likely to occur.

2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than area variances.

The definition of a building, per the Ulysses Zoning Code is: *Any structure having a roof supported by columns, posts or walls*”. Furthermore § 212-162 Fences and walls, exempts unroofed porches and decks, not over 3 feet above the natural grade, from the complying with the Zoning regulations.

By constructing an unroofed porch/deck, the applicant would not require a variance.

3. Whether the requested area variances are substantial.

The variance is at 18 percent and may be considered substantial. However, because of its size and open nature, it would have minimal impact on the character of the neighborhood.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

It is unlikely that the project will result in significant adverse environmental impacts.

5. Whether the alleged difficulty was self-created.

The difficulty is self-created.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS,

Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes that;

Decreasing the front yard setback from 50 feet to 41 feet to allow the construction of a covered porch to the existing home will not have a negative impact on the character or environmental conditions of the neighborhood. The variance is substantial, and the difficulty is self-created.

However, the benefits to the applicant outweigh the potential detriment to the health, safety and welfare of the neighborhood.

For the reasons set forth above, and upon the evidence, law and facts, the BZA hereby does grant the area variance requested by the applicant to decrease the front yard setback from 50 feet to 41 feet.

Motion _____ **MORREALE**

Second _____ **BUTLER**

Ayes: HOWARTH, BUTLER, MORREALE, THOMPSON **Nays:**

Ms. Thompson offered some language changes via a friendly amendment, which was accepted.

Result: Variance granted

Public Hearing continued: (This is a modification from an earlier appeal that was tabled in November of 2018). An appeal by David and Denise Kooperman for three area variances under Section 212-40, Lot Area and Yard Requirements of the R1 District and Section 212-130.A – Standard for Flag Lots, of the Town of Ulysses Zoning Law, for the purpose of subdividing a Flag Lot at the property located at 5288 Curry Road, Town of Ulysses, Tax Parcel Number 12.-1-13.2. The property is located in the R1 Zone. The applicant is seeking the following variances:

- Relief sought from §212-130.A to create a flag lot with 32.83 feet of frontage, where 50 feet of frontage is required.
- Relief sought from §212-40.C to permit the frontage on the parent lot to be reduced to approximately 233.99', where 250' is required.
- Relief sought from §212-40.B to reduce the minimum lot size from 2 acres to 1.14 acres for parcel "A".

Mr. Kooperman said he first approached the BZA about 13 months ago and initially asked for two flag lots, a request that was viewed as substantial. He was advised to have a wetland study completed and have the properties remapped. Since then, Mr. Kooperman said, he has done just that; Ron LeCain completed a wetland study at his request, mapping development location with the least impact to the land. He has also reduced his request from two flag lots to a single flag lot and placed the driveway in a location with the least impact on the land and to neighbors.

Since Mr. Kooperman's first visit to the BZA, the Town has passed new zoning regulations, Mr. Zepko said, and there's no longer any need to consider a variance request for lot size (bullet point three above).

The Town did not receive any written correspondences regarding the variance requests.

Addressing the BZA, Mr. Carroll – the adjacent neighbor to the north – spoke on behalf of himself and Rebecca Cowen, saying they had just purchased their house last year and were surprised to receive notice of two potential flag lots and the addition of a driveway between their yard and adjoining property. They were also concerned about the nearby stream. Since then, Mr. Kooperman has explained his new plan, which Mr. Carroll said makes more sense. A lot of his initial concerns have been worked out, he said.

Mr. Morreale noted the flag lot driveway runs right across the wetland. He expressed concern about that and asked about the planned culvert size and material. Mr. Kooperman, who lives on Curry Road, said his home driveway – along with other Curry Road property owners – has a large, 3-foot wide culvert pipe, and suggested that would be sufficient for this project. If you had a recommendation for the pipe, that would be fine, he said.

Mr. Zepko said the culvert must be 1.5 times the width of the creek, bank to bank, as measured by the high water mark. Mr. Morreale supported these criteria for the culvert. Is there a best practice or state law the BZA can reference? Ms. Thompson asked. There isn't, Mr. Zepko said; this is a seasonal stream, so it's not regulated by any agency.

Resolution

Ms. Thompson MADE the MOTION to take action on the resolution for variances, and Mr. Butler SECONDED the MOTION as follows:

Whereas, the appeal by David and Denise Kooperman, for an area variances at the property located at 5288 Curry Road, Town of Ulysses, Tax Parcel Number 12.-1-13.2. The property is currently located in the R1 Zone.; and

Whereas, the relief requested is for the following:

- Relief sought from §212-130.A to create a flag lot with 32.83 feet of frontage, where 50 feet of frontage is required.
- Relief sought from §212-40.C to permit the frontage on the parent lot to be reduced to approximately 233.99', where 250' is required.
- Relief sought from §212-40.B to reduce the minimum lot size from 2 acres to 1.14 acres for parcel "A", the parent lot.

Whereas, the action is a Type II action under SEQR 617.5(c)(16) "granting of individual setback and lotline variance..." and requires no further review; and

Whereas, by considering the five statutory factors, the BZA reviewed the record and weighed the benefits to the Applicant against the detriment to the health, safety and welfare of the neighborhood if the variances are granted.

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variances.**

No undesirable changes to the character of the neighborhood are likely to occur as a result of granting these area variances.

2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than area variances.

Yes, the applicant can wait until next month, when new zoning requirements will change in the applicant's favor.

3. Whether the requested area variances are substantial.

The flag lot frontage variance is substantial; frontage on the main parcel is not substantial, and the lot size change is substantial. The applicant is seeking the following variances:

Zoning Code	Requirement	Relief Request	Difference	% Change
§212-130.A (frontage of flag lot)	50	32.83	17.17	34.34
§212-40.C (min frontage in R1)	250	233.99	16.01	6.404
§212-40.B (min lot size in R1)	2	1.14	0.86	43

4. Whether the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Our finding is that it is unlikely that the project will result in significant adverse environmental impacts if best practices are used in building the driveway.

5. Whether the alleged difficulty was self-created.

The difficulty is self-created.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS,

Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes that;

Granting relief from the frontage requirement for a flag lot from 50 feet to 32.8 feet to allow the creation of a flag lot will not have a negative impact on the character or environmental conditions of the neighborhood. The variance is substantial, and the difficulty is self-created. However, the benefits to the applicant outweigh the potential detriment to the health, safety and welfare of the neighborhood.

For the reasons set forth above, and upon the evidence, law and facts, the BZA hereby does grant the area variance requested by the applicant to decrease the frontage requirement for a flag lot from 50 feet to 32.8 feet, conditioned upon the installation of the culvert 1.5 times the width of the stream as measured by the high water mark when a building permit is granted.

Motion THOMPSON

Second BUTLER

Ayes: HOWARTH, BUTLER, MORREALE, THOMPSON Nays:

Granting relief from the frontage requirement of the R1 zone from 250 feet to 233.99 feet to allow the creation of a flag lot will not have a negative impact on the character or environmental conditions of the neighborhood. The variance is not substantial and the difficulty is self-created. However, the benefits to the applicant outweigh the potential detriment to the health, safety and welfare of the neighborhood.

For the reasons set forth above, and upon the evidence, law and facts, the BZA hereby does grant the area variance requested by the applicant to decrease the frontage requirement for the R1 Zone from 250 feet to 233.99 feet.

Motion THOMPSON

Second BUTLER

Ayes: HOWARTH, BUTLER, MORREALE, THOMPSON Nays:

Granting relief from the minimum lot size requirement in the R1 zone from 2 acres to 1.14 acres to allow the subdivision of a flag lot will not have a negative impact on the character or environmental conditions of the neighborhood. The variance is substantial and the difficulty is self-created. However, the benefits to the applicant outweigh the potential detriment to the health, safety and welfare of the neighborhood.

For the reasons set forth above, and upon the evidence, law and facts, and based on recently adopted zoning not yet in effect which would render the minimum lot size to 1 acre, the BZA hereby does grant the area variance requested by the applicant to Grant relief from the minimum lot size requirement in the R1 zone from 2 acres to 1.14 acres

Motion THOMPSON

Second BUTLER

Ayes: HOWARTH, BUTLER, MORREALE, THOMPSON Nays:

Result: Variances granted

Discussion of BZA Rules and Procedures

Mr. Howarth postponed the discussion due to inclement weather.

Mr. Howarth MADE the MOTION to adjourn the meeting, and Mr. Morreale SECONDED the MOTION. The motion was unanimously carried.

Meeting adjourned at 8:15 p.m.

Respectfully submitted by Louis Anthony DiPietro II on February 13, 2020.

FINAL