

**TOWN OF MAMAKATING
ZONING BOARD OF APPEALS MEETING
MAY 26, 2016**

Meeting called to order at 7:00 p.m. by Chairman Mordas.

Roll Call: Beverly Martin-Present; Cathy Dawkins-Present; Georgia Rampe-Present; Kent Finley-Present;
Zoning Board Attorney: Steven Mogel, Esq.

David Kahn Public Hearing-Tax Map Section 27; Block 1; Lot 42

Present: David Kahn

The Chairman asked for a brief summary of what he would like to do. Mr. Kahn stated he would like to put up a two car garage off to the side and in the front of his house. It would be extremely difficult to build a garage behind his house because the land would have to be built up which would make that very expensive and it could interfere with the drainage and his storm water runoff. He believes the structure would be far enough away from neighboring property lines.

The Chairman asked if the notice of mailings were sent out as well as the notice in the paper. The clerk for the Zoning Board responded in the affirmative.

Motion made by G. Rampe to open the public comment hearing; second by B. Martin. All in favor. The Chairman asked if there was any comment and or questions on this application; there was none. Was there any comment or questions from the Board?

C. Dawkins stated she drove by the property and it would be very difficult to put a garage in the back of the house. M. Mordas also drove by the property and he feels the same as Ms. Dawkins.

C. Dawkins and K. Findley asked how big the garage would be; Mr. Kahn responded 24x24 single story, 2 car garage. Mr. Kahn was agreeable to putting some kind of decorative planting, trees on the road side of the garage.

Motion made by C. Dawkins to close the public hearing; second by G. Rampe. All in favor.

Chairman Mordas read the criteria for an area variance. The denial was for Code 199-13 c-2 – No accessory structure is located closer to the street than the street wall of the principal structure except in the case of farm buildings.

In its determination the Zoning Board shall take into consideration the benefits the applicants is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall consider:

- 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 variance. B. Martin-No; G. Rampe-No; C. Dawkins-No; K. Findley-No; M. Mordas-No.
- 2) Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. B. Martin-No; G. Rampe-No; C. Dawkins-Yes; K. Findley-No; M. Mordas-No.
- 3) Whether the requested area variance is substantial. B. Martin-No; G. Rampe-Yes, C. Dawkins-Yes; K. Findley-Yes; M. Mordas-Yes.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. B. Martin-No; G. Rampe-No; C. Dawkins-No; K. Findley-No; M. Mordas-No.

- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of such variance. B. Martin-Yes; G. Rampe-Yes; C. Dawkins-Yes; K. Findley-Yes; M. Mordas-Yes.

The Chairman asked for a motion to grant a variance for 199-13 c-2 so that Mr. Kahn can build his accessory structure closer to the road than his residence street wall with no portion of the structure any closer than 195 ft. from the edge of the road with some plantings on the street side, such as evergreens. Motion made by K. Findley; second by C. Dawkins. All in favor.

Ernest Miller & Siri Borg Public Hearing – Tax Map Section 10; Block 1; Lot 48.1

Present: E. Miller & S. Borg

The Chairman asked for a brief description of what they would like to do. E. Miller stated they would like to build an equipment shed where there is one presently located now, only it will be larger and it will be in front of the “plane” of the house. They would like to put it here because it’s right on the driveway and you can’t see it from the road; the current shed is too small. Also it’s where the original shed and barn is located. Motion requested to open the public hearing. Motion made by C. Dawkins; second by B. Martin. All in favor.

Chairman Mordas asked if there were any questions and or comments from anyone in the audience. C. Lesser stated he is very familiar with this property and it sounds like this is a lot like the previous applicant and these people will most likely do the job very well.

The Chairman asked if there were any questions from the Board. K. Findley asked if Doll Road was a Town Road; response was yes, it’s a dead end turn around, but it is maintained. Their property is at the end of the turnaround. Their map was displayed.

Motion made by G. Rampe to close the public hearing; second by C. Dawkins.

The criteria for an area variance were read.

- 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 variance. B. Martin-No; G. Rampe-No; C. Dawkins-No; K. Findley-No; M. Mordas-No.
- 2) Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. B. Martin-No; G. Rampe- Yes; C. Dawkins-Yes; K. Findley-Yes; M. Mordas-Yes.
- 3) Whether the requested area variance is substantial. B. Martin-No; G. Rampe-No; C. No; K. Findley-Yes; M. Mordas-No.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. B. Martin-No; G. Rampe-No; C. Dawkins-No; K. Findley-No; M. Mordas-No.
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of such variance. B. Martin-Yes; G. Rampe-Yes; C. Dawkins-Yes; K. Findley-Yes; M. Mordas-Yes.

K. Findley asked how much land they own and why do they have to put it in that spot, why not in the back. E. Miller responded they have 16.8 acres and if they were to relocate this equipment shed a lot of trees would have to be cut down and a road made to get to it.

Chairman Mordas stated what his position is on this as he is not sure a variance is actually needed in this situation as it's rather "unique" since it's a house on a dead end but to cover everything and to make sure this doesn't become an issue again in the future, he would like to request a motion to grant the variance for 199-13 c-2; this structure will be approximately 180 ft. from the end of the road (the two existing sheds will be removed). This approximate delineation (location) as shown on the map dated 5/22/1999 survey map.

Motion made by C. Dawkins; second by K. Findley. All in favor.

Application of Joel Weberman – Tax Map Section 46; Block 2; Lot 79

Present: Mr. Weberman & Jacob (friend)

Mr. Weberman stated he has a house on North Road that has four families living in it. He received a Notice of Violation; they were in the Court to evict all the families, the families were there all crying and carrying on saying they had nowhere to go and so the Judge Welch said to come before the Zoning Board to see if there was anything that could be done. They are not sure what zone they are in. It is supposed to be a two family.

The Board members reviewed the bulk table requirements. Several Board members asked if they want the variance or not; they responded they do but they don't know. They have to report back to the Judge what happens. They have separate fire alarms; you enter the apartments separately from outside. They stated it was advertised when they bought it as a 4 family but they decided it was easier to go with a 2 family. They have separate water and sewer.

There is an apartment upstairs, two on the main floor, one in the basement and one in the cottage as a seasonal.

B. Martin asked him when he purchased the house; Mr. Weberman responded a year ago.

Chairman Mordas stated you still have the Notice of Violation you have to address. The applicants have no problem with the Board members looking at the property.

Counselor Mogel explained the ZBA process and the Board needs more information from the applicants. Counselor Mogel informed them that if they want to continue to try for a variance, it would have to be a use variance and that this type of variance is very difficult. He continued to explain some of the requirements he would have to meet and show the Board that the property is not economically viable in any other way other than as a four family. You will have to show that by real evidence – Mr. Weberman interjected Counselor Mogel stating they that anyone who has to sell it as a four family cannot sell it.

Counselor Mogel responded what he means by that is, it will have to be like an appraiser's report; it has to be something anecdotal like a neighbor tells you something, it has to be something that would be in a form that is evidentiary, solid. So that's one thing and you also have to show that your property is unique and the reason why is, if everybody's property has the same problem, then it's a zoning issue for the whole area not just for your property. Counselor Mogel wanted Mr. Weberman to realize that it is a very high standard that you have to reach. "Jason" responded "so, to take your advice, there is no way we can reach this standard"; Counselor Mogel responded that there is no way he can say this. Jason said we have to make it back to a two family and we will have to "kick" everybody out and report back to the Judge. Counselor Mogel stated this would be his advice, the only advice he can give you, which is this is something you will want to speak to your own attorney about and you would want to say "is it feasible in any way to get a use variance for this property?" If that's what you're interested in.

The gentlemen responded they just want to get it done because the Judge wants it to be a four family. Counselor Mogel stated he does not have a vote in this matter, he only advises the Board on the legal aspects of each matter.

C. Dawkins stated they did have a similar application a few months ago where the dwelling had four families in it illegally and he ended up withdrawing his request for a four family although he was not sent to the Board by a Judge.

Counselor Mogel stated since he is responding to a Board member, the Judge does not have jurisdiction to tell anyone that they must come and apply for a variance before they can evict anyone, it may be a suggestion but he cannot direct someone to come here.

Chairman Mordas stated we may be "jumping over" the other issue of building with no permits which was issued by the Building Inspector. He stated that according to the Building Inspector there is a history of the prior owners of violations so going forward with this, you have to factor in that according to the Building Inspector there is a good chance you will have to bring this residence into code. It doesn't say what's wrong with the property, so you have to work that out with the Building Inspector. The violation is saying that it's a two family dwelling.

Chairman Mordas briefly mentioned the shed on the property that was converted illegally; this needs clarification.

The applicant's briefly spoke on the taxes they paid; Counselor Mogel briefly explained why the taxes are what they are and the recourses available to them.

K. Finley stated we need some more information from the Building Inspector on the violation letter and he would like to see if there are any variances. C. Dawkins would like to see a map of the property.

They are not ready for a public hearing.

Chairman Mordas again emphasized the importance of taking care of the violation issued by the Building Inspector and that the Board will not issue any variances until they are taken care of, no matter who did the building, whether it was you or the previous owner.

The applicant requested to come back to the July 28th meeting. The Board was in agreement.

Motion made by M. Mordas to close the meeting; second by K. Finley. All in favor.

Respectfully submitted,

Linda Franck,
Zoning Board Secretary