

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
December 7th, 2015 @ 7:00 PM  
STILLWATER TOWN HALL**

**Present:** Chairman William Ritter  
Vice Chairman Donald D'Ambro  
Joseph Urbanski  
Richard Rourke  
Timothy Scrom

**Also Present:** Daryl Cutler, Attorney for the Town  
Paul Male, Acting Director, Building, Planning and  
Development  
Lindsay Zepko, Town Planner  
Sheila Silic, Secretary

**Absent:** Christine Kipling

Chairman Ritter called the meeting to order at 7:00 P.M.

**Review and Approval of Minutes of Zoning Board of Appeals:**  
There were no minutes to be approved.

**Public Hearings/New Business:**  
**ZBA2015-9, Post Area Variance, 3 Aft Court**

Chairman Ritter recognized Mr. Douglas Post who gave a brief overview of the project before the Board. Mr. Post stated that he has new maps outlining the sewer lines as Mr. Male had requested. Mr. Post stated that he is merging his two parcels on Aft Court and would like to build a single family dwelling on the lot. Mr. Post stated that there is a driveway off NYS Route 9P which is 25ft wide and serves the three existing houses on Aft Court. Mr. Post referred to Mr. Male's comment letter referring to Item #4A. The sewer lines have been placed on the map. For #4B the wells on the property are no longer in use, it is all public water and sewer. For #4C regarding encroachments, the only issue may be a propane tank but he cannot answer that question as the property is for sale. Item #5 pertaining to stormwater, Mr. Male spoke to the engineer who

provided him with a grading plan that he reviewed and was satisfied that there were no issues. Item #6, the driveway is rubble but will be paved at future date.

Chairman Ritter proceeded to open the public hearing asked if anyone wished to provide public comment.

Lynn O'Connor, 35 Pine Ridge

Ms. O'Connor stated that Mr. Post's house will be in their back yard and she was under the understanding that the property was too small to build on. Ms. O'Connor asked how Mr. Post can get a variance. Mr. Ritter stated that the property does not meet the dimensions for zoning. Mr. Ritter stated the variance procedure is designed for an applicant with a hardship on the property and that they cannot build on to be able to apply for a variance. Ms. O'Connor asked if this is a hardship. Mr. Cutler stated that if a property does not conform to zoning, the applicant can come before the Zoning Board of Appeals and request a variance, the Board will review the material received and the comments from the public and then the Board members will make their decision.

Kevin O'Connor, 35 Pine Ridge

Mr. O'Connor stated that they look down onto this property and the chimney will be even with the top of the hill. Mr. O'Connor asked if there will be air quality problems and are there any zoning codes for air quality. Mr. Ritter stated that he does not believe there are any zoning codes pertaining to air quality.

Gary & Patricia Nunez, 4 Backwind Drive

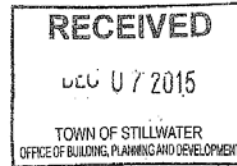
Ms. Nunez stated that she has concerns about the air and noise quality. Ms. Nunez asked if he plans to live at the premises because they have had problems with renters of property the applicant owns. Mr. Nunez stated that he likes the way it is now and putting four houses in this area is over-saturation. Mr. Nunez stated that this will disrupt his quality of life. Mr. Nunez stated that granting this variance will set precedence with other property in the area.

Carol Marotta, 21 Pine Ridge Road

Ms. Marotta asked if any of the Board members had visited the site. Mr. Rathbun stated that he had visited the site. Ms. Marotta stated that the site is in a pit and was excavated about five years ago and gives the illusion that there is more property than what actually exist. Ms. Marotta stated that there are trees that are hanging over or have fallen and that the bank is unstable. Ms. Marotta stated that the roof line and chimney will be located at the top of bank. There would have to be building codes or regulations pertaining to this. Mr. Rathbun stated that the chimney has to be 3ft higher than the nearest roofline. Ms. Marotta asked if the code pertains to the terrain of the property. Mr. Rathbun stated that he does not believe it does. Ms. Marotta stated that there are three residences sharing this 25ft driveway and it is very difficult to see in either direction when entering onto NYS Route 9P. There is a serious grade on this property. Ms. Marotta asked the Board members to consider these comments when making their decision.

Chairman Ritter asked that the letter received from Dorothy Callahan, 6 Backwind Drive be entered into the minutes.

**From:** saratogadot@aol.com  
**Sent:** Monday, December 07, 2015 2:53 PM  
**To:** Paul Male  
**Subject:** Zoning Board Hearing 3 Aft Court



Dear Members:

I own the property adjacent to the area in Question (6 BACKWIND DRIVE). My primary residence is in New Jersey and I am unable to get to the meeting tonight, so I am writing to register a few questions about the area variance review, as well as a negative vote against the proposal as it now stands.

My map from 1935 shows the area in question as a potential road to Stillwater at its inception. Perhaps that is why it is just a long excavation with my house on one side and the Post's other house on the opposite side.

When the Posts fixed 4 Aft Drive, it was our impression that it would be their home. Instead it became a rental property. It is our hope, first of all, that this house proposal is not intended as another rental home.

Building a house on this piece of land is hard to conceive, since there are still tree roots visible from the previous excavation of soil several years ago. How a landslide from either hill into the gulley-shaped property can be avoided will require an engineering solution. The condo properties are actually relatively close above it.

I have no negative feelings toward the Posts. They seemed a very nice couple when they introduced themselves several years ago. In our area we thought they were going to be new neighbors. They did a lovely job fixing up an old cottage, but didn't live there.

I hope if this residential proposal is approved, we neighbors will be able to understand the plans that will result in a safe and secure home that fits well into our Resort Residential District as outlined in the Town of Stillwater regulations.

Thanks you for listening to my misgivings and understanding why I am apprehensive about this proposal. I only wish the Posts good fortune in making the necessary adjustments and making this the comfortable residence they desire.

Dorothy Callahan  
6 Backwind Drive

Dave Yule, 15 Pine Ridge Road

Mr. Yule stated that he is a member of the Board of Directors of the HOA. Mr. Yule stated that he moved to this area three years ago and that he likes to explore the woods and counted ten streams between Stewarts and Fitch Road that carry some of the water to the Hudson. Mr. Yule stated that there has not been a severe storm and he fears for anyone who lives in that ravine. Mr. Yule stated that he would like to see the property stay in its natural wooded environment.

Chairman Ritter proceeded to close the public hearing as there was no further public comment.

Mr. Rourke asked if there is natural gas along NYS Route 9P. Mr. Post stated that there is no natural gas along NYS Route 9P. Mr. Rourke asked what kind of heat is being used for the house as this could become an issue. Mr. Post stated that it is a propane furnace but he could he put in electrical heat.

Mr. Urbanski asked about the trees that are hanging over and if he intends to address issues. Mr. Post stated that he has no problem cleaning up the trees that are hanging. Mr. Urbanski asked Mr. Post if he would address the audience on what he is proposing. Mr. Post stated that the house will be located by the wall, there will be a swell built to divert the water down the side and away from the foundation and that there will not be anything done with the side slope.

Chairman Ritter stated that there will be no digging into the slope. Mr. Post stated that was correct. Chairman Ritter stated that the footings would be placed with the finished floor of the basement at the level of the 'bowl' at 243ft elevation. He would then come back and backfill the foundation wall which will slope away from the building and would reinforce the slopes of 'bowl' area. Mr. Post stated that is correct. Mr. Ritter asked about the easements on his property. Mr. Post stated that it is a parking easement for 2 Aft Court. Chairman Ritter asked if there are any other easements on the property. Mr. Post stated not that he is aware of. Mr. Ritter asked about the sewer lines from his house. Mr. Post stated that the sewer lines come off NYS Route 9P. Chairman Ritter asked if he would give easements to the other lots of Aft Court for ingress and egress. Mr. Post stated that he has no problems with granting easements. Chairman Ritter stated for the record, why haven't you merged the three lots. Mr. Post stated because he wants to build a new house for himself. Chairman Ritter stated that in Mr. Male's comment letter that the application needs to be corrected. Ms. Zepko stated that she has made the corrections and needs Mr. Post to initial the correction, which Mr. Post did.

Chairman Ritter asked if anyone had any additional concerns or questions and hearing none he asked to move to discuss SEQRA.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2015 RESOLUTION NO. 17**

WHEREAS, Douglas and Carol Post have submitted an application to the Zoning Board of Appeals for an Area Variance regarding property located on 3 Aft Court, more fully identified as Tax Map Numbers 218.20-2-25 and 218.20-2-8; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed action is a Type II action and requires no further action or review by the Zoning Board of Appeals;

WHEREAS, the Zoning Board of Appeals reviewed each of the 11 factors contained in Part 2 of the EAF and determined that the proposed action will have no, or only a small, environmental impact;

Now, therefore, be it

RESOLVED, that the zoning Board of Appeals hereby determines that the proposed action by the applicant, Douglas and Carol Post, is a Type II action and requires no further action or review by the Zoning Board of Appeals.

A motion by Member D'Ambro, seconded by Member Rourke, to adopt Resolution No. 17 of 2015.

A roll call vote was taken on Resolution No. 17 of 2015 as follows:

Member Timothy Scrom	NO
Member Christine Kipling	ABSENT
Member Richard Rourke	YES
Member Joe Urbanski	YES
Vice Chair Donald D'Ambro	YES
Chairman William Ritter	YES

Resolution No. 17 of 2015 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on December 7, 2015.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2015 RESOLUTION NO. 18**

WHEREAS, Douglas and Carol Post have submitted an application to the Zoning Board of Appeals seeking an Area Variance to build a residence on property located at 3 Aft Court, Stillwater, more fully identified as Tax Map Numbers 218.20-2-25 and 218.20-2-9; and

WHEREAS, the Applicant is seeking an Area Variance for the lot size and road frontage requirements contained in Stillwater Zoning Code §3.5(D); and

WHEREAS, pursuant to §14.2(D) of the Stillwater Zoning Law, the Town properly and timely published a notice for public hearing conducted on November 9, 2015 and December 7, 2015; and

WHEREAS, the Zoning Board of Appeals has duly considered the application and the elements necessary to consider the granting of an Area Variance by taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

WHEREAS, the public expressed the following concerns: the topography of the lot contains fairly steep slopes, and over hanging trees; the location of the residence is lower than the surrounding houses which could cause smoke from any wood burning stove to be at ground level for the neighboring properties; the proposed driveway is already shared by three other lots and is only twenty five feet wide when fifty feet is required; the applicant has not demonstrated any hardship; and granting the variances will allow an additional residence in an area causing crowding and effecting the aesthetics. Concerns were also raised about the property being used for rental purposes. Issues with tenants of the applicants' other property were expressed during the public hearing;

WHEREAS, discussion was had about the engineering of the proposed design and placement of the building. The applicants have agreed to build without excavating the lot and will back fill the foundation. This will reinforce and reduce the height of the slopes, raise the height of the building and create a swale to handle Stormwater drainage. The applicants expressed that they will not heat the house with a wood stove and will not be renting the property but will use the property for themselves and their family to enjoy. The Board appreciated the concessions by the applicant, but recognized the method of heating and the future rental of the property cannot be regulated by the Zoning Board of Appeals;

WHEREAS, the Board considered the that of the applicants could combine lots and make their existing lot more conforming. The applicants expressed that this option would not allow them to build on the lot and the other lot that already has a residence is a legally non-conforming lot;

WHEREAS, if the variance is not granted, this vacant lot cannot be used for a residence because none of the surrounding landowners will sell additional land which would be a hardship. The Board considered the fact that even if the lots were combined, the applicant could legally build a garage of equal size and height at the proposed location for the residence and heat the garage with a wood burning stove. That outcome would have the same or similar environmental impact as the proposed residence;

WHEREAS, the proposed driveway is currently used by three other lots. As a condition to the variance, the Board could require the applicants to get easements to those three lots which would make the lots more conforming;

Now, therefore, be it

RESOLVED, that the Stillwater Zoning Board of Appeals hereby makes the following findings:

1. An undesirable change will not be produced in the character of the

neighborhood or a detriment to nearby properties will not be created by the granting of the Area Variance because the size and location of the proposed residence is consistent with the neighborhood and the proposed driveway is already being used by three lots as a driveway;

2. The benefit sought by the applicant cannot be achieved by some method, feasible to the applicant to pursue, other than an Area Variance because no other land is available for sale;
3. The requested Area Variance is not substantial because the driveway is already in existence and used by three other lots and therefore does not create a substantial impact. The lot size is 81% of the required size in an area that contains many sub-standard sized lots;
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because the applicants' engineer designed a plan that addressed concerns regarding the sloping topography and height of the building to the satisfaction of the Town Engineer; and
5. The alleged difficulty was not self-created because the lot was created before the current zoning issues were in place; and be it further

RESOLVED, that the application of Douglas and Carol Post for an Area and Road Frontage Variance to allow for a residence to be built on property located at 3 Aft Court, more fully identified as Tax Map Numbers 218.20-2-25 and 218.20-2-9 is GRANTED subject to the conditions set forth below and conditions contained in the engineering report of November 30, 2015 and December 7, 2015 of Paul Male, PE.

1. That the applicant construct the residence as shown by the engineering design, without excavation and with the back fill and grading shown on those designs;
2. That the map show the sewer lines for the surrounding properties;
3. That the applicant comply with the proposed drainage plan; and
4. That the applicant filed easements for utilities, and easement for ingress and egress on the driveway for 1, 2 and 4 Aft Court.

A motion by Member Rourke, seconded by Member D'Ambro to adopt Resolution No. 18 of 2015.

A roll call vote was taken on Resolution No. 18 of 2015 as follows:

Member Christine Kipling	ABSENT
Member Richard Rourke	YES
Member Joe Urbanski	NO

Member Timothy Scrom	YES
Vice Chair Donald D'Ambro	YES
Chairman William Ritter	NO

Resolution No. 18 of 2015 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on December 7, 2015.

“After the vote on SEQRA, further discussion was had regarding the concerns raised at the public hearing. Mr. Urbanski raised the following concerns: He believes this is self-created hardship; instead of creating three separate lots, the lots can merged to make two more conforming lots; He believes that this is a substantial variance; and if a wood stove were to be used to heat the residence, with that terrain the smoke would stay in the bowl.

Mr. Scrom stated that he agrees with Mr. Urbanski on the issues with the wood stove. He stated that he also has concerns regarding the slope.

Mr. Rourke stated that, although it is a steep slope, the issue with the slope are addressed by the engineering design of the swells and water runoff.”

A motion to adjourn was made by Mr. Urbanski, seconded by Mr. Rourke, at approximately 8:40 P.M.