

**TOWN OF STILLWATER
ZONING BOARD OF APPEALS
June 27, 2011 @ 7:30PM
STILLWATER TOWN HALL**

Present: Donald D'Ambro (DD), William Ritter (WR), Richard Rourke (RR) and Christine Kipling (CK)

Absent: Chairperson James R. Ferris (JF)

Also Present: Daryl Cutler (DC), Attorney for the Town; Paul Cummings (PC) from Chazen Engineering; Ray Abbey (RA), Building/Codes Inspector and Ed Kinowski, (EK)

-(DD), acting chair-person, called the meeting to order at 7:35PM.

Adoption of Minutes: Motion by (RR) and seconded by (CK) to adopt the May 23, 2011 minutes. Minutes were approved unanimously with the following change: Corrected the date directly after "Adoption of Minutes" to read April 25th, 2011. All in favor, WR abstained due to his absence.

-Hence forth the meeting notes will note "creator date and page numbers" within a footer on each page.

Agenda Items:

-(DC) suggested that the Board discuss the terminology "substantial change" prior to opening the scheduled public hearing. He stated that the Board should determine if the case before it is a "substantial change" from the prior applications concerning the same setback issue, on the same property. The Board refreshed memories regarding the past two denials relating to the subject parcel, especially since there are new board members that were not present at the prior meetings that discussed set back variances.

-The applicant [Stockman] was asked what was proposed in 2006. The first application was a stair and deck extension to the East of the existing building that extended into to side yard a distance of 11'. It was denied. The change before this Board this evening would propose an extension into the side yard a distance of 8', including a landing and an exterior stair descending to the North towards the front of the house. Propane tanks and compressors restrict a stair descending in the opposite direction to the South. The proposed northerly stair direction avoids conflicts with windows, propane tanks and air conditioning condensers. Photographs were exhibited.

Motion by (WR) that it is a substantial change which would warrant allowing the application to be heard. (RR) seconded

No additional discussion

Roll Call Vote

Ritter aye

Kipling aye

Dambro aye

Rourke aye

-Motion to take off the table the Applicant's Variance request, from the previous meeting was made by (WR) seconded (RR)

Public Hearing (7:50 pm): Timothy Stockman, ZB 2011-05, SBL #262.6-2-2. Area Variance to expand on a pre-existing non-conforming lot at 12 Champlain Ave.

-(DD) opened the public hearing at 8:02PM

- Photographs were shown via projector of the front elevation of the building, the East side of the building and the East side yard, all taken by staff.
- The Applicant wishes to add a wood framed exit stair and landing on the East side of the two family residence, thereby infringing upon the Town's side yard setback. (RA) stated that the proposed stair would make a safer second floor, especially if the exit stair avoided windows and led in the opposite direction from the existing rear stair.
- There was a Board discussion of prior hearings related to the same Project
- (DD) asked if anyone would like to speak in regards to this matter.
- Patricia O'Kosky spoke in favor of the Project. She lives in the immediate area.
- Leamon Sbonable spoke in favor of the Project. He lives directly west of the subject property.

Discussion: (CK) asked applicant for an explanation about the reputed difficulty of renting the upstairs apartment. Mrs Stockman explained that the existing entrance is a wooden enclosed rear porch and it is a concern as it is the only exit from the second floor. The existing second floor side exit door lacks a landing and stair. The applicant stated that renters have wanted a second exit. The proposed location is the only side of the building that would provide ample space to have an exit stairway. Driveway space on the West side of the building is narrow and is also a shared driveway.

TOWN OF STILLWATER ZONING BOARD OF APPEALS 2011 RESOLUTION NO. 12

WHEREAS, Tim Stockman has submitted an application to the Zoning Board of Appeals for an Area Variance in order to construct a second floor exit stairway on property located at 12 Champlain Avenue in the Town of Stillwater, more fully identified as Tax Map Number 262.6-2-2; 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;

Now, therefore, be it

RESOLVED, that the Zoning Board of Appeals hereby determines that the proposed action by the Applicant, Tim Stockman, is a Type II action and requires no further action or review by the Zoning Board of Appeals.

A motion by Member Ritter, seconded by Member Rourke, to adopt Resolution No. 12 of 2011.

A roll call vote was taken on Resolution No. 12 of 2011 as follows:

Acting Chairperson Donald D'Ambro	Yes
Member Christine Kipling	Yes
Member William Ritter	Yes
Member Richard Rourke	Yes
Chairperson James R. Ferris	Absent

Resolution No. 12 of 2011 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on June 27, 2011.

**TOWN OF STILLWATER
ZONING BOARD OF APPEALS
2011 RESOLUTION NO. 13**

WHEREAS, Tim Stockman has submitted an application to the Zoning Board of Appeals seeking an Area Variance in order to construct a second floor exit stairway on property located at 12 Champlain Avenue in the Town of Stillwater, more fully identified as Tax Map Number 262.6-2-2.

WHEREAS, the Applicant is seeking an Area Variance from the side setback requirement contained in Stillwater Zoning Code §3.5; 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 May 23, 2011 and June 27, 2011; 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;

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 house will be similar to the rest of the neighborhood;
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 having the stairs travel to the back of the house is not feasible due to propane tanks and no other land is available without creating non-conformity on the other property;
3. The requested Area Variance is substantial because it is thirty (30%) percent of side set back but the safety concerns addressed by the 2nd exit for the upstairs outweighs the setback violation;
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because

this is a small project, the house will still be consistent with other houses in the neighborhood; and

5. The alleged difficulty was not self-created due to a change in zoning, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the Area Variance because the property was constructed eighty (80) years ago prior to zoning; and be it further

RESOLVED, that the application of Tim Stockman for an Area Variance in order to construct a second floor exit stairway on property located at 12 Champlain Avenue in the Town of Stillwater, more fully identified as Tax Map Number 262.6-2-2, is GRANTED.

A motion by Member Ritter, seconded by Member Kipling, to adopt Resolution No. 13 of 2011.

A roll call vote was taken on Resolution No. 13 of 2011 as follows:

Acting Chairperson Donald D'Ambro	Yes
Member Christine Kipling	Yes
Member William Ritter	Yes
Member Richard Rourke	Yes
Chairperson James R. Ferris	Absent

Resolution No. 13 of 2011 was granted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on June 27, 2011.

-The Board appreciated seeing site photos taken by staff on the overhead projector.

-(EK) mentioned that Google Earth can be used to assist the Board and the public at future meetings

Old Business –

-(CK) asked (DC) if the Stockman application had been denied would the Town would be liable. The answer made by (DC) was “no”, since there were several other ways that the Applicant could accomplish the same result.

-(EK) asked if the Town had a policy for determining “significance” since there is no definition of significant change. (DC) stated that “significant change “ has to be determined on an individual basis. What is substantial for one applicant may not be for another, given the specific facts of each case. (DC) emphasized that the Board is required to detail the five factors of justification thoroughly for each case before it to assist future boards to know why a variance was denied so that one could compare any subsequent modified plan to see if the modifications addressed the concerns over the original application.

New Business –

-(RB) gave a report of the Building Planning and Development Department for the previous several weeks.

- A detailed discussion took place regarding the terminology and allowance for mobile homes/modular homes in the Town's Zoning Ordinance. (RB and RA) both mentioned that there are two definitions in the NYS Building Code describing, pre and post 1976 units. Prior to 1976 they are called mobile homes, post 1976 they are called Manufactured Homes. The NYS Building Code and the Town's Zoning Ordinance deal with the subject in different ways.

-(WR) asked (EK) if the Town is developing an ordinance for dealing with ATV operations. (WR) mentioned that residents are using ATV's for many other purposes in addition to recreational purposes. (EK) mentioned that there is an ATV law presently on the books.

-(WR) asked for information regarding the Zoning Law as it applies to "sheds" and he inquired about the pending revisions to the Fee Schedule for sheds. (RB) responded that all sheds are considered as "accessory structures" and therefore must meet setback requirements, and any shed over 144sf requires a building permit. (CK) mentioned that over-regulation is a factor in residents wanting to flee the state. (EK) added that shed issues usually surface between adjacent property owners. He shared a situation where a shed was considered a health hazard due to its contents.

-(DD) asked for an explanation on how the Town's GEIS fees are computed. (PC) responded with a full description on how the specific dollar amounts are computed.

-(DD) asked about meetings on Transfer Development Rights (TDR's). (EK) mentioned that the Town will be participating with the Town of Bethlehem, in pursuit of implementing a program within the Town. Town personnel interviews are being set up to discuss participation in the program.

Executive Session:

Motion to go into Executive Session at 9:10PM by (WR), seconded by (RR) for purposes of discussing potential litigation, not to return.

Respectfully submitted by
Richard R. Butler
Secretary for ZBA