

**ZONING BOARD OF APPEALS
238 Main Street, Cold Spring, New York 10516**

**January 14, 2019
7:30 P. M.**

Regular Monthly Meeting

Pledge of Allegiance

Approval of Minutes:

- November 5, 2018

New Business:

Joseph Fratesi & Lindsey Taylor

TM# 50.-2-63.3

Appeal #920

220 South Highland Road, Garrison

(The applicants have applied to the Philipstown Planning Board for Site Plan Approval to construct a single-family residence on a 17.083-acre parcel at 220 South Highland Road. The house site is located at the end of a 1500-foot-long driveway that was constructed by a previous owner under Driveway Permit No. 409 and as constructed has grades that reach a maximum of approximately 20%. The Planning Board, citing Section 112-33(B)(3), asserts that the maximum driveway grade may not exceed 14%. Therefore, the applicants seek an interpretation that Section 112-33(B)(3) does not apply because the approval sought is for Site Plan Approval, not for Subdivision Approval and thus is not regulated in Chapter 112. Failing that interpretation, the applicants seek a determination that the decision whether or not to waive the requirements of Section 112-33(B)(3) is not a matter for the Zoning Board to decide, but lies with the Planning Board under Section 112-44. Failing both of the requested interpretations, applicants seek a variance to allow the existing driveway constructed under Driveway Permit No. 409 with a maximum grade of approximately 20% to be used as constructed, and that the requirement that the driveway have a maximum grade of 14% as stated in Section 112-33(B)(3) be varied accordingly.)

**ZONING BOARD OF APPEALS
November 5, 2018
MINUTES**

The Zoning Board of Appeals for the Town of Philipstown held their regular monthly meeting on Monday, November 5, 2018, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York.

PRESENT: Robert Dee - Chairman
Vincent Cestone - Member
Paula Clair - Member
Leonard Lim - Member
Adam Rodd - Attorney (Drake Loeb PLLC)

ABSENT: Granite Frisenda - Member

****PLEASE NOTE that these minutes were abstracted in summary from being present at the meeting and sound recording. If anyone should seek further clarification, please review the sound recording.**

Chairman Robert Dee opened the meeting at 7:30 P. M. with the Pledge of Allegiance.

Minutes

Chairman Robert Dee: Okay. This is for public hearing from an application that we marked complete last month. Well first let me do the minutes. The minutes from October. Does anybody have any changes or anything to the minutes or –

Vincent Cestone: I make a motion to accept it as submitted.

Leonard Lim: I'll second.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Leonard Lim: Aye.

Paula Clair: Aye.

Chairman Robert Dee: Aye. Alright motions are good.

Betsy A. Haddad, 19 Lake Celeste Drive, TM# 72.17-1-14

Chairman Robert Dee: Okay. Let's see. Like I said this is a public hearing, the application was complete. This is for a Betsy Haddad, 19 Lake Celeste Drive, Garrison. The applicant is seeking approval for a renovation/addition to an existing 1021 square-foot single-family residence. The

project consists of a one-story addition approximately 8 foot by ten and a half foot, it's heated, requiring a front yard variance where 60 feet is required and 23.17 is proposed and currently it's 24.4. The proposed covered porch, unheated, requires a front yard variance where 60 feet is required and 36.45 is proposed and also requires a rear yard variance where 50 feet is required and 39.94 is proposed. A proposed open wood deck and steps require a rear yard variance where 50-foot is required and 39.39 is proposed (currently is for 44.7). The project will also increase impervious surface coverage from 22.24% to 25.07% where 10% or less is required. We went over this kind of last month. You changed something? I'm sorry, you changed the front? Alright could you just get up there to speak to us? Please tell us who you are and-

Joanne Tall: Good evening, I'm Joanne Tall. I'm the architect working with Betsy Haddad, the homeowner. Since last month, October's meeting, we simply just rotated the deck and made it a different shape. It still has the same-

Chairman Robert Dee: Variance.

Joanne Tall: Yes, correct. We kept that absolutely the same.

Leonard Lim: So, the distances haven't changed, just the shape.

Joanne Tall: Yeah. Exactly. No numbers for variances have changed.

Leonard Lim: Okay.

Chairman Robert Dee: Okay. I can see it's a lot of variances because it's, it's a small piece of property and the house is there and the zoning has changed over the years so I could see, you know.

Joanne Tall: Yes, well um-

Chairman Robert Dee: It's non-conforming.

Joanne Tall: The existing house is wholly on the front yard setback.

Chairman Robert Dee: Right. Okay.

Leonard Lim: How old is the house?

Joanne Tall: Oh, I should know this. It's the same vintage as all the cottages there. I would say 1920ish.

Leonard Lim: Okay. That's-

Chairman Robert Dee: Yeah, it's been-

Leonard Lim: Okay, just need the timeframe. 1920ish.

Chairman Robert Dee: And zoning has changed the while since its 1920s. I think you know the zoning has changed that's for sure. That was, what is it, 5 acres up there or ten acres or something like that now?

Joanne Tall: It's ten acres.

Chairman Robert Dee: Ten acres now, right.

Joanne Tall: And this is 0.46 acre, a twentieth of-

Chairman Robert Dee: That makes it hard to build, yeah.

Joanne Tall: Of what's required.

Chairman Robert Dee: Okay. I think we went over a lot of this last meeting there. Like I said the only thing you changed was the- the variances are the same. The only thing you changed was the design of the front porch. Are there any questions from any of the board members?

Leonard Lim: Just remind me one more time, we talked about the septic, where is it?

Joanne Tall: It's on the site plan. It's between the house and Lake Celeste Drive. It's on the survey, not my plot plan.

Chairman Robert Dee: Existing service. It's an existing system. It's an existing system?

Joanne Tall: Yes. For a three-bedroom and this house is a, remains a three-bedroom.

Chairman Robert Dee: Right. And you're not putting any more bedrooms in, so you don't need to require to-

Joanne Tall: Correct.

Chairman Robert Dee: To expand it.

Vincent Cestone: And your well? I'm assuming you have a well, right?

Chairman Robert Dee: No shared, shared water I believe or something like that? Shared water?

Joanne Tall: The well is across the street on somebody else's property. I believe three houses share one well.

Vincent Cestone: Ok, okay.

Betsy Haddad: INAUDIBLE

Joanne Tall: There's a little pump house across the street, across the road. It's not on her survey. It would be on a neighbor's survey.

Chairman Robert Dee: Okay. Are there any other questions from anybody because I know we went over this last time. Paula?

Paula Clair: No, I, basically the amount of additional variance is pretty small, you know, so.

Chairman Robert Dee: Well it's a small piece of property, small house, yeah.

Paula Clair: Yeah.

Chairman Robert Dee: Okay, that's fine if you're finished. Is there, it's a public hearing anybody here that wants to speak about this? Nobody here, because he's from the newspaper back there so I know it's not him. Okay. All right. Let's go over the five factors here. Number one, what possible detriment would the variance have on nearby properties? Let's see, the granting of the requested area variance will not create any detriment to nearby properties nor will there be any undesirable change in the character of the neighborhood. The scale of the addition of the front porch (182 square feet) and the extension to the bedroom represent a modest increase and will blend in architecturally and fit the character neighborhood. The rebuilt open deck is largely in the same footprint as the existing deck, which is in need of replacement due to deterioration. The additions can be seen from the road; however, they are screened from the neighboring properties with vegetation, forest and terrain. There will be lighting at each exterior door per the requirement of the New York State Residential Building Code.

Leonard Lim: Is the lighting pointing down or pointing out?

Chairman Robert Dee: The exterior door.

Joanne Tall: The lighting will be a wall sconce. They're usually down casters.

Chairman Robert Dee: You better stay up there in case we have some more questions.

Joanne Tall: Okay. Typically, of course we haven't spec'd the lights yet, but there'll be wall sconces by each door and on the underside of the porch ceiling, perhaps some hanging pendants. The wall sconces will be down casters; the pendants will glow all the way around.

Chairman Robert Dee: Okay.

Joanne Tall: But they're going to be, you know, cottagey like fixtures.

Chairman Robert Dee: Okay.

Joanne Tall: They're not going to be any up casters or-

Chairman Robert Dee: Alright number two. If you did not get the variance, how else could you build what you want or accomplish your goals? There's no feasible alternative that would not require an area variance for this property. The existing cottage has three bedrooms, a small kitchen and only one bath. Ms. Haddad would like to add a powder room and enlarge the kitchen slightly, making it more functional. The proposed plan accomplishes this by taking square footage from an existing bedroom at the north corner, yet it has the bathroom. Powder room and kitchen largely in the same location as the existing plumbing core of the house. To retain the use of the bedroom 76 square feet was added to the north side of the cottage. This, go ahead-

Paula Clair: Can I you ask a question?

Chairman Robert Dee: Sure.

Paula Clair: The powder room, is that an additional bathroom?

Betsy Haddad: Yes.

Joanne Tall: Yes, it is.

Paula Clair: Is it a full bathroom or a half bathroom?

Joanne Tall: This cottage had only one full bath and three bedrooms. So, we're proposing to keep that full bath and have a half bath, a powder room.

Paula Clair: Okay.

Chairman Robert Dee: Alright let's see. The proposed construction would require an area variance for the front yard setback, rear yard setback and impervious surface coverage. The existing cottage is pre-existing non-conforming to the current zoning regulations and Ms. Haddad is requesting to increase the non-conformity as follows: Front Yard by 1.23', Rear by 5.31' and Impervious Surface coverage by 3%. Okay. What impact or effect will the variance have on the current physical and environmental conditions of the area? The addition of the front porch is located on a wetland buffer along with approximately 30% of the existing house. The buffer zone is located on the driveway side of the house and in the front yard. A front porch and entry need to be contiguous with the driveway and road. The porch will be constructed with pier footings with a floor plan elevated above grade, limiting excavation. The extension of the bedroom at the north side of the house and the rebuild of the deck will also have pier footings and thus limited excavation. The increase of the impervious surface over existing conditions is 3% and will be mitigated by stormwater retainage devices and/or rain gardens. Number five. Is the variance requested as a result of a self-created hardship? Ms. Haddad purchased the property in 2015. The existing house and property are pre-existing non-conforming in respect to the required front yard setback, rear yard setback and impervious surface coverage, due to the irregular shape and non-conforming lot size which is 0.463-acre in a 10-acre zone. Due to the origins of the neighborhood as a 'summer lake community' where the houses were originally designed to be cottages and often placed close to a private road access. The cottage is still small

(1021 square feet) and is located wholly on the front yard, the lot is undersized and the increases in non-conformity are modest. Are there any questions on any of the-

Leonard Lim: Yeah. On question 4 at the end it says 'devices and/or rain gardens', what's a rain garden?

Joanne Tall: It's one way that we've started mitigating stormwater. It's a way of certain plants and gravel to hold a certain amount of water before it goes into, you know, the storm drains. Well on this road there's no storm drains.

Leonard Lim: So, basically you put in certain types of plants to draw up more water?

Leonard Lim: In a swale. I wish I had a picture of it. It's, we would probably use infiltrators, meaning cultec's under the ground, sort of stormwater retainage and if we, because of the rock in the area, if we can't fit in however many we need for the increased impervious surface, we will mitigate with a few rain gardens which, if you can imagine, you know, retainage ponds from large developments, it's a tiny one.

Leonard Lim: Oh, okay. I wasn't sure what that meant.

Joanne Tall: It does the same thing; it stores it, the stormwater, and lets it seep into the ground in place.

Leonard Lim: Okay. Never heard of that before, rain garden.

Paula Clair: Sounds like a good idea.

Leonard Lim: It does, I mean-

CROSSTALK - INAUDIBLE

Chairman Robert Dee: I haven't heard of it either but it sounds pretty good to tell you the truth.

Joanne Tall: It's certain gravel, certain plants and, you know.

Chairman Robert Dee: That's an innovative idea. Any other questions here? Alright at this point I make a motion that the public hearing be closed.

Vincent Cestone: I so move.

Leonard Lim: Second.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Leonard Lim: Aye.

Paula Clair: Aye.

Chairman Robert Dee: Aye. Okay at this time we'll vote on the variances for 15 Lake Celeste Drive. Mr. Cestone?

Vincent Cestone: I vote to approve.

Chairman Robert Dee: Vote to approve. Mr. Lim?

Leonard Lim: I vote to approve all of them.

Chairman Robert Dee: Okay.

Paula Clair: I vote to approve as well.

Chairman Robert Dee: And I vote to approve. So, it's passed unanimously and what happens is the attorney writes up a resolution, okay? That's called a resolution. When he finishes that he sends it to our secretary. She calls me and I come up and sign it, okay? That could be thirty days, okay? That doesn't happen overnight because he's a very busy man. It may not look like it right now but he is, so.

Adam Rodd: I look busy, no?

Chairman Robert Dee: You're not busy?

Adam Rodd: No, I look busy.

Chairman Robert Dee: Well then, we'll do three days then, is three days good? No. Okay but you'll have it within 30 days okay? Any other questions? Everybody's good? Okay.

Leonard Lim: Good luck.

Vincent Cestone: Motion to adjourn.

Chairman Robert Dee: Motion to adjourn.

Leonard Lim: Second.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Leonard Lim: Aye.

Paula Clair: Aye.

Chairman Robert Dee: Aye. Alright the next meeting, we don't meet in December, the next meeting will be January 14th. Okay. Everybody have a happy holiday and don't forget to vote, everybody vote.

(The meeting adjourned at 7:45 pm by a unanimous decision.)

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

DATE APPROVED: _____

Respectfully submitted,

Tara K. Percacciolo
Secretary

APPEAL # _____ Tax Map # 50.-2-63.3 _____

Final hearing date _____ Zoning Board decision APPROVED / DENIED

Date application submitted January 3, 2019

Application fee \$ _____ Escrow \$ _____ Received by _____

To the Zoning Board of Appeals, Town of Philipstown, New York:

I (we), Joseph Fratesi and Lindsey Taylor

residing at 27 Spring Street, Beacon, New York 12508

Telephone: home 917-447-4040 (Cell) business 845-391-8855

HEREBY appeal the decision of (name and title) Planning Board Chairman Anthony Merante

whereby he/she, The Planning Board

GRANTED ___ DENIED X a BUILDING PERMIT ___ a CERTIFICATE OF OCCUPANCY ___

For Site Plan Approval

To Joseph Fratesi and Lindsey Taylor

of 27 Spring Street, Beacon, New York 12508

For property at tax map # 50.-2-63.3 in zoning district RC

WHEN FILLING OUT APPLICATION, ATTACH ADDITIONAL PAGES AS NECESSARY TO ANSWER QUESTIONS

1. LOCATION OF PROPERTY: (Give 911 address and a map and detailed narrative giving directions to the property using road names, such as Route 9 or 9D, Old Albany Post Road, East Mountain Road South, etc. and landmarks such as Garrison School, North Highlands Fire House, Highlands Country Club, etc):

220 South Highland Road, Philipstown, New York. Driveway is opposite driveway into Garrison Fish and Game Club.

2. NAMES AND ADDRESSES OF ADJOINING PROPERTY OWNERS (Include those opposite on streets/highways. Use additional sheets if necessary. This information may be obtained in the Town assessor's office)

50.-2-63.1
So. Highland Road
Evan Thompson, Park Manager
Fahnestock Park
1498 Route 301
Carmel, New York 10512

61.-4-10
200-210 Sp. Highland Road
Evan Thompson, Park Manager
1498 Route 301
Carmel, New York 10512

40.-2-63-2
200 So. Highland Road
Michel Rockmore
200 So. Highland Road
Garrison, New York 10524

61.-4-16
183 So. Highland Road
Garrison Fish and Game Club Inc.
P.O. Box 366
Garrison, New York 10524

3. PROVISIONS OF ZONING CODE INVOLVED (give Article, Section, Sub-section, paragraph by number, Do not quote text of code) **NOT ZONING CODE - Town Code Sections 112-33(B)(3) and 112-44**

4. PREVIOUS APPEAL (If there have been any previous appeals for this property or any portion thereof, set forth the appeal number, date, relief sought and the ZBA decision resulting) **None**

TYPE OF APPEAL:

an INTERPRETATION of the Zoning Code or Maps

a VARIANCE from the Zoning Code

a SPECIAL USE PERMIT under the Zoning Code

5. DETAILS OF APPEAL (Complete only that section which applies to the appeal you are submitting)

(a) INTERPRETATION of the Zoning Code is requested

(1) An exact statement of the interpretation requested is:

Applicants have applied to the Philipstown Planning Board for Site Plan Approval to construct a single-family residence on their 17.083-acre parcel located at 220 South Highland Road. Site Plan Approval is required because the footprint of the house exceeds 3000 square feet. The house site is located at the end of a 1500 foot long driveway that was constructed by a previous owner of the property under Driveway Permit No. 409, which was issued by the Town on June 11, 2001, and for which a Certificate of Compliance was issued on May 18, 2009 (Attachment 1). The driveway, as constructed, has grades that reach a maximum of approximately 20%. The Planning Board, citing Section 112-33(B)(3), asserts that the maximum driveway grade may not exceed 14%.

The applicants seek an interpretation that Section 112-33(B)(3) does not apply because the approval sought is for Site Plan Approval, not for a Subdivision Approval and thus is not regulated under Chapter 112.

Failing that interpretation, the applicants seek a determination that the decision whether or not to waive the requirements of Section 112-33(B)(3) is not a matter for the Zoning Board to decide, but lies with the Planning Board under Section 112-44.

Failing both of the requested interpretations, applicants seek the variance requested below.

(b) a VARIANCE from the Zoning Code is requested:

(1) An exact statement of the details of the variance requested is:

Applicants seek a variance to allow the existing driveway constructed under Driveway Permit No. 409 with a maximum grade of approximately 20% to be used as constructed, and that the requirement that the driveway have a maximum grade of 14% as stated in Section 112-33(B)(3) be varied accordingly.

(2) The grounds on which this variance should be granted are:

The driveway was constructed under Driveway Permit No. 409 and a Certificate of Compliance was obtained. Reducing the driveway grade such that it has a maximum grade of 14% imposes an undue hardship on the applicants and will require the applicants to disturb grades that exceed 35%, which is contrary to the intention of Section 147-4 (C) of the Town Code. Maintenance of the driveway will, of course, be necessary, but such maintenance is routine and will require significantly less disturbance than the amount of excavation, grading and filling necessary to achieve a maximum grade of 14%.

(c) a SPECIAL USE PERMIT is requested:

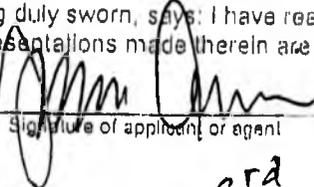
(1) The reason the permit is requested:

(2) An exact statement of use for which the permit is requested:

(3) The facts showing the use is permitted as a SPECIAL USE under the code and the ability of the applicant to comply with all requirements of the code for granting of a special use permit:

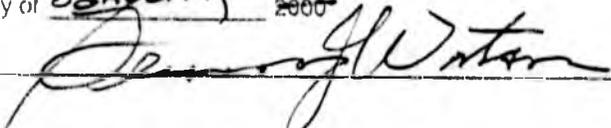
STATE OF NEW YORK, COUNTY OF PUTNAM _____

Being duly sworn, says: I have read the foregoing appeal and papers attached; that the statements and representations made therein are true to the best of my knowledge and belief.



Signature of applicant or agent

Sworn before me this 3rd day of January 2019
2000

Notary, Putnam County. 

GLENNON J. WATSON
Notary Public, State of New York
No. 4755184
Qualified in Putnam County
Commission Expires March 30, 2019

SUBMISSION REQUIREMENTS: (1) For a VARIANCE or INTERPRETATION please submit (7) individual packets
(2) For a SPECIAL USE PERMIT please submit (19) individual packets

each packet containing one each of the below listed items. These items are very specific and MUST be complied with exactly

1. Completed appeal form
2. Deed to property
3. Denied application for Building Permit or Certificate of Occupancy
4. Building plans with ONE ORIGINAL professional seal and signature
5. Survey prepared by NYS licensed surveyor, showing all property lines, structures and dimensions to property lines. One survey with ORIGINAL professional seal and signature
6. Certificates of Occupancy for any existing structures
7. Contour maps as required by conditions

PHILIPSTOWN ZONING BOARD OF APPEALS
SUPPLEMENTAL WORKSHEET FOR AREA VARIANCE APPLICANTS

In accordance with state law, the Zoning Board must grant or deny an area variance based on specified factors and a balancing of "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". We have developed this Supplement to assist you with preparing, submitting and presenting your case to the Zoning Board. Please complete the factors 1a - 5 below and submit with your application (attach additional pages if necessary). We have provided suggested questions which will assist you in answering each factor and in preparing for the Board's review. It is strongly suggested that you structure your presentation at the hearing in accordance with the factors. Provide facts and proof to support each factor.

FACTORS TO BE CONSIDERED BY THE BOARD

1a. What possible detriment would the variance have on nearby properties?

How close are nearby structures? - Will your structure be visible to others or will it block a view? - Do you propose exterior lights?

Granting the variance will not result in any detriment to nearby properties. The house proposed by the applicants is over 700 feet from the nearest

house through rugged wooded terrain. The proposed house will not block a view. It may be visible from this other house, but the view will be distant

and through a wooded landscape. Exterior lighting will be residential in nature and night sky compliant.

1b. What impacts would the variance have on the character of the neighborhood?

Have others in the neighborhood received similar variances? - Does the Neighborhood contain similar structures with similar setbacks/heights etc.? Is your property similar to or different from others in the area? - If several of your neighbors were to receive variances in the future similar to the one you now request, would the neighborhood be changed?

Granting the variance will not have any negative impacts on the neighborhood. In fact, granting the variance will reduce the construction necessary

to access the building site. Alternatively, if the Appellants are required to reconstruct the driveway, the impacts associated with the additional

construction work and the additional disturbance will negatively impact passersby on the trail through the property into the State Park.

Similar variances have not been granted in the neighborhood.

2. If you didn't get the variance, how else could you build what you want or accomplish your goal?

For example: different location or design; shorter fence; smaller deck; smaller overhang or addition?

If the variance is not granted, the applicant would have to reconstruct the driveway in the same location now occupied by the existing driveway. Alternate routes to the building site available on the property do not exist because it would require construction of slopes exceeding the 35% percent and, while technically possible, would cause significantly more construction time and disturbance.

Most of the surrounding property is State Park, so the possibility of any nearby structures being built is virtually non-existent. Because there are no nearby building lots, other than the already improved lot referred to in the response to Item 1A, above, the possibility of similar variances being sought is also virtually non-existent.

3. What is Code requirement you seek to vary?

Appellants seek a variance from Section 112-33(B)(3), which limits the maximum grade of a driveway to 14%.

How large of a variance do you seek? The existing driveway reaches a maximum grade of approximately 20%. Accordingly, a variance

allowing the use of the driveway at its present grade would require an increase in the grade of approximately 6% more than is allowed.

4. What impact or effect will the variance have on the current physical and environmental conditions in the area? Is there grading (or blasting) proposed? - Will you be paving previously unpaved surfaces? - Are you proposing to remove any vegetation? - Are there wetlands or other watercourses on site? - Will normal drainage patterns be affected? - How close are the nearest wells and septic systems? - Will the proposed use or activity produce emissions (noise or odors)? - Will traffic be increased? - Is the area considered scenic?

If the variance is granted, the amount of physical disturbance will be reduced because the need to grade the driveway down to 14% will be eliminated in favor of merely dressing the driveway to make it functional on a daily basis. If anything, granting the requested variance will greatly reduce or, more likely eliminate the need to blast to make the driveway passable.

The existing driveway, which was built ca. 2001, has become overgrown and the shoulders gutters need to be refurbished. Accordingly, some vegetation will have to be removed. However, if the variance is not granted, significantly more vegetation will have to be removed.

There is a small portion of State Wetlands WP27 on the site. If the variance is granted, the only work that will occur within the wetland buffer will be the maintenance necessary to bring the road back to a serviceable condition. If the variance is not granted, the additional grading will extend into the wetland buffer

The newest well is more than 300 feet from the area where the driveway would have to be reconstructed if the variance is not granted. The nearest septic system is approximately 70 feet from the driveway on the subject property and more than 200 feet from the area where the construction would have to occur if the variance is not granted.

***See below for continuation

5. Is the variance requested as a result of a "self-created hardship"?
Was there a need for the variance when you purchased the property? - How long ago did you purchase the property? - Did you build the structure without a permit?
Is the need for a variance as a result of someone's mistake? Describe

The variance requested is not self-created. The driveway that was installed was built on the authority of a duly issued Driveway Permit, which was eventually converted into a Certificate of Compliance issued by the Town. See Exhibit 1

The driveway existed when the Appellants first viewed the property and they had no reason to believe that it was not legal.

The Appellants purchased the property January 10, 2014.

***4. If the variance is granted, the drainage patterns will not change, although some increase in runoff will occur when the driveway is dressed. It is not expected that the drainage patterns would change if the variance is not granted.

The proposed activity will increase local ambient noise levels during construction regardless of whether the variance is granted or not. The duration and intensity of the noise will be greater if the variance is not granted because the additional construction activity will require an additional period of time for completion of the work. The greater amount of work associated with not granting the variance will require heavier equipment and is likely to require blasting, both of which will increase noise levels during construction. Once completed, the ambient noise levels are not expected to be greater than they are today. Odors are not expected to be produced regardless of whether the variance is granted.

If the variance is granted, traffic activities are not expected to increase above what is expected to result from the construction of the Appellants' residence. If the variance is not granted, some additional amount of traffic activity will occur due to the added time and construction activity that will be required to bring the driveway grade down to 14%.

The area, as virtually all of Philipstown, is considered scenic.

Statement in Support
of
Appeal of Joseph Fratesi & Lindsey Taylor
for an
Area Variance
from the
Zoning Board of Appeals
of
The Town of Philipstown
Putnam County
New York

BACKGROUND

Joseph Fratesi and Lindsey Taylor (the Appellants) applied to the Philipstown Planning Board for Site Plan Approval to construct a single-family home on their 17-acre property located at 220 South Highland Road, Tax ID 50.-2-63.3, in the Town of Philipstown. During its review, the Philipstown Planning Board declined to process the application because the existing driveway, which the Appellants intend to utilize, has grades that reach a maximum of approximately 20% when, in the opinion of the Planning Board's consultants, the maximum allowable grade is 14%.

Simultaneously with this appeal, the Appellants sought an interpretation of the Town Code from the Zoning Board of Appeals (ZBA) that: (1) the applicable law (Section 112-33(B)(3)) does not apply to the application of Mr. Fratesi and Ms. Taylor, or failing that; (2) that Section 112-44 provides that the authority to grant the relief sought by the Appellants rests with the Planning Board and not the ZBA. In anticipation of the possibility of an unfavorable interpretation, the Appellants simultaneously submitted the Appeal for a Variance to which this statement is attached.

THE APPEAL

Appellants seek a variance to allow them to utilize the existing driveway with a maximum grade of approximately 20% for access to the residence they propose to construct. The driveway was constructed under the authority of Town Driveway Permit and Certificate of Compliance No. 409. (See Exhibit 1)

Section 267-b of the Town Law provides a 5-pronged balancing test to assist zoning boards in deciding whether or not to grant an Area Variance. Each of the tests are repeated below and followed by a statement relating thereto.

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

Granting the variance will not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will minimize the amount of construction and grading required to reach the building site. See Attachments 2 and 3.

On the other hand, the amount of construction and land disturbance required to achieve the 14% grade specified in Section 112-33(B)(3) is significant. Reconstruction of the driveway will require cutting and filling over a 900-foot long run of the driveway with cuts in excess of 4 feet and fills in excess of 8 feet, to say nothing of the side slopes and retaining walls necessary to support and/or protect the driveway.

"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"

The benefit sought by the applicant, which is access to the building site reserved in the Conservation Easement that burdens the property, can be achieved by re-constructing the road in its present location, but at the cost of significant disturbance to that portion of the property nearest the trail from South Highland Road into the State Park. Moreover, the variance sought will allow the Appellants to minimize the impacts that Section 112-32 of the Town Code specifically is intended to avoid: "excessive tree removal, cuts or fills and land disturbance" and "encroachment upon wetlands buffer zones".

"Whether the requested variance is substantial"

The variance may very well be considered substantial. Reconstructing a driveway from 20% to 14% is significant. However, the Appellants are seeking to reduce the amount of disturbance required to access their home and they are willing to endure the inconvenience they may experience to avoid the impacts associated with reducing the road grade.

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

The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. If the variance is granted, impacts on the neighborhood will be minimized because there will be less construction than there would be if the maximum road grade is to be reduced to 14% or less. If the Appellants are required to reconstruct the driveway, the area of disturbance will be almost tripled. The result will be an extended period of construction, a greater change in the appearance of the land as viewed from the access path into the State Park.

"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 the variance"

The alleged difficulty is not self-created. The driveway that was installed was built on the authority of a duly issued Driveway Permit, which was eventually converted into a Certificate of Compliance issued by the Town. Since the lot was created, the intention of the subdivider was to develop the lot for residential purposes with the proposed house being constructed in the same area as the Appellants plan to build their home.

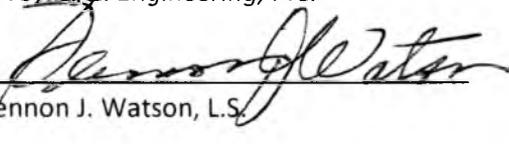
CONCLUSION

For the reasons stated above, we submit that the balancing test weighs in favor of granting the variance sought by the applicant.

Respectfully submitted,

BADEY & WATSON

Surveying & Engineering, P.C.

By 
Glennon J. Watson, L.S.

Definite

TOWN OF PHILIPSTOWN

EXHIBIT 1

DRIVEWAY PERMIT / CERTIFICATE OF COMPLIANCE

PERMIT # 409

HIGHWAY DEPARTMENT (845)265-3530

BUILDING DEPARTMENT (845)265-5202

Owner name Maria Mesa Stevens Telephone # 212/663-1117

Owner address 800 West End Ave., New York, NY 10025 (Apt 10E)

Detailed location of property (attach tax map) So. Highland Rd. (Across from Garrison Fsh & Cm Clu)

Tax map # 50.-2-63.3 Town road(s) affected So. Highland Rd.

Description of project Driveway entrance to pvt. resid..

If project is for private right-of-way or easement, attach copy of filed map and give map number N/A

Proposed commencement date June 1, 2001 Proposed completion date June 30, 2001

Owner agrees as follows:

- To stake driveway location with two clearly visible stakes, 20 feet apart
- To perform the operation in accordance with Chapter 78 of the Code of the Town of Philipstown and all other applicable laws, rules and regulations
- To perform the operation in such reasonably safe and proper manner that it
 - will not encroach upon or cause any damage or injury to the travel-way of the adjacent highway or road
 - will not interfere with or endanger travel or traffic
 - shall have optimum sight distance
 - will not obstruct or interfere with the maintenance or improvement of the adjacent highway or road
- If by reason of future construction or safety within the right of way of the adjacent highway or road, the Town of Philipstown should require a re-arrangement of the driveway or operation herein, the owner agrees for himself, his successors and assigns, that the owner of subject property at such time shall promptly alter said driveway or operation to conform with said future construction or requirements.
- It is understood that the operation herein shall be constructed in accordance with the requirements of this permit. No Certificate of Occupancy for a site or building shall be issued until a Certificate of Compliance for this operation has been issued.

Conditions of permit: Owner will be responsible for any damage to any town road affected by the permitted operation during construction of the driveway and buildings. A suitable material shall be used on any unpaved portion of the driveway and shall be compacted to prevent any run off of the material. Owner will be responsible for any water or material running onto the town road affected by this permitted operation during the lifetime of the driveway. The Town of Philipstown will not be responsible for any water or material running off of the town road affected by this permitted operation onto the owner's property. No subsequent alteration, extension, expansion, widening, relocation or reconstruction of the operation for which this permit is issued may be undertaken until such time as a new and separate application has been made and approved in accordance with the town code. Owner shall comply with drawing and specifications provided by building department. Failure to comply may result in revocation of permit or denial of Certificate of Compliance.

**** APRON, WHETHER COMPACTED OR PAVED, MUST BE COMPLETED PRIOR TO COMMENCEMENT OF ANY BUILDING CONSTRUCTION *****

Application fee \$ 75.00 paid 5-25-01 (date) CL # 2427

Received by M. L. [Signature]

PERMIT

CERTIFICATE OF COMPLIANCE

See attached letter

Approved by (Hwy Supt) [Signature] Date 5/14/01

Approved by (Hwy Supt) [Signature] Date 5-8-09

Granted by (Bldg Insp) [Signature] Date 5/14/01

Granted by (Bldg Insp) [Signature] Date 5-18-09

Deposit amount \$ 800- (\$800 on unpaved town road / \$2200 on paved town road)

Deposit received by [Signature] Date 5/14/01

PERMIT MUST BE RENEWED, IN WRITING, PRIOR TO EXPIRATION DATE, EVERY SIX MONTHS UNTIL WORK IS COMPLETED. FAILURE TO RENEW INVALIDATES PERMIT.

EXPIRATION DATE 12-11-01

STATE OF NEW YORK COUNTY OF NEW YORK

The undersigned applicant certifies that they have read, understand and will comply with the terms and conditions of this application and all applicable town and state codes and laws.

Signed (owner MUST sign) Maria Mesa Stevens

Date 5/21/01

STATE OF NEW YORK, COUNTY OF PUTNAM

SHIKHA GHATA, SS

being duly sworn, says: I have read the foregoing application, and the statements and representations made therein are true to the best of my knowledge and belief.

No. 1GU6018356

Sworn before me this 21 day of May 01 Commission Expires Jan 03

[Signature]
(Notary Public)

DEPOSIT RETURNED TO Maria Mesa Stevens

ON 5/15/09

CHECK# 1142