

Decision Form

January 9, 2024 at 6 pm for Barrington Zoning Board of Adjustment/Appeals

Application/petition # 2023-11-28

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: 11/28/2023

Affidavit of publication/posting is on file.

Hearing Date: 1/9/2024

- A. The applicant or appellant is (name and address): Mervin Wenger
4774 Chubb Hollow Road
Dundee NY 14837
- B. The applicant or appellant is the owner of the following described property which is the subject of the application or appeal: ____ 1/4 of ____ 1/4,
Town of Barrington in Yates County
known as 4774 Chubb Hollow Road, Dundee NY 14837
- C. The property is presently in use for residential/agricultural and has been so used continuously for the life of the property.
- D. The property includes a nonconforming structure/use described as

- E. The property has been the subject of a prior appeal/variance/conditional use described as

- F. The applicant or appellant proposes (brief project description/attach plans):
- G. The applicant or appellant requests:
- ☐ an appeal of the zoning administrator's determination
 - ☐ a conditional use/special exception
 - ☐ a use variance
 - ☒ an area variance
- under Section _____ of the ordinance.

The features of the proposed construction and property that relate to the grant or denial of the application or appeal are (refer to the language/standards of the ordinance):

Build a 30' x 55' free-standing pole barn onto the existing garage at 30' tall & 10' from the North property line for an addition 1,650 square feet. That would be a 10' height variance & 15' distance variance.

CONCLUSIONS OF LAW

Based on the above findings of fact the Board concludes that:

Appeal/Interpretation – The order of the zoning administrator (is/is not) in excess of his/her authority because (or)

The zoning administrator's interpretation of Section _____ of the zoning code (is/is not) a correct interpretation because

Variance – The variance (does/does not) meet all three of the following tests:

A. The hardship is due to physical limitations of the property rather than the circumstances of the appellant because of the location of the existing garage.

B. The variance will not harm the public interest because the stream located to the North of the property line will not be harmed & the front set-back is more than 80' off the road.

C. Unnecessary hardship

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new *Ziervogel* and *Waushara County* decisions.
- For a use variance, unnecessary hardship exists only if there is no reasonable use of the property without the variance.

D. Unnecessary hardship (is/is not) present because

Conditional Use – The application for a conditional use permit (does/does not) qualify under the criteria of Section _____ of the ordinance because

ORDER AND DETERMINATION

On the basis of the above findings of fact, conclusions of law and the record in this matter the board orders:

Appeal/Interpretation – The zoning administrator’s order/interpretation of the zoning code or map is (affirmed/modified/reversed) and the administrator is ordered to:

Variance/Conditional Use – The requested (variance/conditional use) is granted-in-part subject to the following conditions/mitigation:

1. No parking the cement trucks on Chubb Hollow Road.
2. There is a 90-day clean-up timeline once the Certificate of Compliance has been issued.

Note that if this condition is not satisfied, Section 8.16E of the code will be enforced to rescind the special use permit.

The zoning administrator is directed to issue a zoning permit incorporating these conditions and certifying by the petitioner/applicant’s signature that he/she understands and accepts the conditions.

Expiration of permit. Any privilege granted by this decision must be exercised within 12 months of the date of this decision after obtaining the necessary building, zoning and other permits for the proposed construction. This period will be extended if this decision is stayed by the order of any court or operation of law.

Revocation. This order may be revoked by the Board after notice and opportunity to be heard for violation of any of the conditions imposed.

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

January 9, 2024 at 6:37 pm for Barrington Zoning Board of Adjustment/Appeals

Signed  _____ Attest
Chairperson

Helene Ribble
Secretary

Dated: February 12, 2024

Filed: February 15, 2024