



Historic Town of Hyde Park
Zoning Board of Appeals
4383 Albany Post Road
Hyde Park, NY 12538
(845) 229-5111, Ext. 2

“Working with you for a better Hyde Park”

**MINUTES FOR PUBLIC HEARING/REGULAR MEETING
OF THE HYDE PARK ZONING BOARD OF APPEALS**

October 26, 2022, 6:00 PM

Present/Absent David McNary, Chairman
Present/Absent James Agrawal, Board Member
Present/Absent Paul Donnelly, Board Member
Present/Absent Richard Perkins, Board Member
Present/Absent Gerald Bowen, Board Member
Present/Absent John Scileppi, Alternate

Present/Absent Kathleen Moss, Zoning Administrator
Present/Absent Sarah Wilson, ZBA Consulting Attorney
Present/Absent Kathleen Hoppe, ZBA Secretary

PLEDGE OF ALLEGIANCE

The meeting began at 6:02 PM. Chairman David McNary led the Pledge of Allegiance. He then read the resolution to appoint Board Member Gerald Bowen as Vice Chair of the Zoning Board of Appeals for the remainder of 2022.

Town of Hyde Park
Zoning Board of Appeals
4383 Albany Post Road
Hyde Park NY 12538
(845) 229-5111 ext. 2
(845) 229-0349 Fax

**RESOLUTION DESIGNATING ZONING BOARD OF APPEALS
VICE-CHAIRPERSON FOR THE YEAR 2022**

October 26, 2022
Resolution: #2022-A

Moved By: David McNary
Seconded By: Richard Perkins

NOW THEREFORE BE IT RESOLVED, that Gerald Bowen be designated the Vice-Chairperson of the Zoning Board of Appeals, authorized to conduct meetings of the Zoning Board of Appeals and to sign Resolutions and related documents, including invoices and correspondence, on behalf of the Zoning Board of Appeals in the absence of the Chairperson.

**Chairman David McNary
James Agrawal
Gerald Bowen
Paul Donnelly
Richard Perkins**

Roll Call Vote Aye-5 Nay-0 Absent-0 Motion Carried

NEW PUBLIC HEARINGS:

LUCIANO (22-19Z)

Location: 37 Prince Road, Hyde Park
Grid #: 6163-02-745895

Three (3) Area Variances – Section 108-5.15 Bulk Regulations in Greenbelt District
Change front yard setback from 50 feet to 35 feet 7 inches (for front porch), change front yard setback from 50 feet to 30 feet (for landing and stairs), and change existing impervious percentage from 32.6% to 33.8% (144 square feet), to replace existing porch and entryway.

MOTION: Richard Perkins
SECOND: Gerald Bowen

To open the public hearing for Luciano.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay-0 Motion Carried

The representative for this application has not yet arrived. There was a motion to temporarily adjourn this hearing until later in the meeting.

MOTION: Richard Perkins

SECOND: James Agrawal

To temporarily adjourn the public hearing for Luciano.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay-0 Motion Carried

ARRIETA (22-20Z)

Location: 609 Salt Point Turnpike, Poughkeepsie (Town of Hyde Park)

Grid #: 6263-02-851768

Three (3) Area Variances – Section 108-5.15 Bulk Regulations in Greenbelt District

Change rear setback from 50 feet to 15 feet, change side setback from 25 feet to 15 feet, change impervious from maximum of 15% to 29.9%, for the demolition of an existing home and building of a new single-family residence.

MOTION: James Agrawal

SECOND: Richard Perkins

To open the public hearing for Arrieta.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay- 0 Motion Carried

Christopher Marta introduced himself as representing the owner Jessie Arrieta, who was also present. He said he is the designer and project manager. He introduced the application and summarized the project. He answered various questions from the Board. There was some discussion of the setback for a

generator. Mr. Marta proposed to submit additional documents addressing this before the next meeting / public hearing.

MOTION: James Agrawal

SECOND: Gerald Bowen

To adjourn the public hearing for Arrieta to November 17, 2022.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay- 0 Motion Carried

Chairman McNary acknowledged a person who arrived after the start of the meeting, who identified himself as Jeffrey Lewis, representing the Luciano application. Chairman McNary re-opened the public hearing for Luciano.

LUCIANO (22-19Z)

Location: 37 Prince Road, Hyde Park

Grid #: 6163-02-745895

Three (3) Area Variances – Section 108-5.15 Bulk Regulations in Greenbelt District

Change front yard setback from 50 feet to 35 feet 7 inches (for front porch), change front yard setback from 50 feet to 30 feet (for landing and stairs), and change existing impervious percentage from 32.6% to 33.8% (144 square feet), to replace existing porch and entryway.

MOTION: James Agrawal

SECOND: Richard Perkins

To re-open the public hearing for Luciano.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay-0 Motion Carried

Jeffrey Lewis introduced the application and described the project. Chairman McNary asked if there was any public comment, and there was none. Board

member Paul Donnelly spoke, he said that he met with the owner who walked him through the project. Mr. Donnelly asked a question regarding the stairs to the porch, which was answered by Mr. Lewis.

MOTION: Richard Perkins
SECOND: James Agrawal

To close the public hearing for Luciano.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay-0 Motion Carried

**Town of Hyde Park
ZONING BOARD OF APPEALS
4383 Albany Post Road
Hyde Park NY 12538
(845) 229-5111**

RESOLUTION TO GRANT AN AREA VARIANCE

**Robert Luciano
37 Prince Road
Hyde Park, New York 12538**

Date: October 26, 2022

Motion: Paul Donnelly

Resolution # 22-19Z

Second: James Agrawal

WHEREAS, the applicant, Robert Luciano has submitted an application for an area variance to construct a porch on the front entrance of the house. (the "Project") at property located at 37 Prince Road, Hyde Park, New York, identified as tax parcel no. 6163-02-745895, in the Greenbelt Zoning District (the "Site"); and

WHEREAS, the Project is depicted with measurements and a sketch prepared by Mr. Jeff Lewis dated September 22, (the "Plan")

WHEREAS, the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit a front yard setback of 35.7 feet where 50 feet is required, a

second front yard setback of 30 feet where 50 feet is required, and impervious area for stairs from 32.6% to 33.8% (the "Requested Variance"); and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(17), the granting of an area variance for a single-family, two-family or three-family residence is a Type II action under the State Environmental Quality Review Act and is not subject to review under the Act; and

WHEREAS, a duly noticed public hearing was held on October 26, 2022 during a duly noticed meeting during which all those who wished to speak were heard; and

WHEREAS, the Zoning Board of Appeals closed the public hearing at its October 26, 2022 meeting; and

WHEREAS, the applicable standards for considering an area variance are set forth in Town Law Section 267-b and Hyde Park Zoning Law Section 108-33.6(B)(2), which require the Board to take 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 general neighborhood or community by such grant.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance with Section 267-b of the Town Law and Hyde Park Zoning Law Section 108-33.6(B)(2) regarding the Requested Variance:

1. The Requested Variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The current entry is in poor condition and has uneven stair risers. The new porch with a new entryway will be compliant with current zoning codes. It will also enhance the aesthetic appeal of the house and provide an outdoor area which will be 90% in the footprint of the house and allow viewing of the private lake which the house has deeded rights to use. The proposed project will enhance both the appearance and value of the property.
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. The variance is necessary because the house is already less than fifty feet from the street. The house was constructed in 1955. The proposed porch will extend less than six inches past the roof line. The applicant is seeking an area variance because the applicant will be unable to make these changes without a variance.

3. The Requested Variance is numerically substantial. The variance will change the permitted front yard setback from 50 feet to 35.7 feet, which is a decrease of 28.6%. The other front yard setback will change the distance of the house to the road from 50 feet to 30 feet, which is a decrease of 40%. Additionally, the impervious material will change from 32.6% coverage to 33.8% coverage, which is an increase in 1.2% for a total of 144 square feet of impervious cover. Any impacts of this encroachment would be less substantial than the house itself, and any detriment to the neighborhood is far outweighed by the benefits to the applicant.
4. The Requested Variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district.
Decreasing the front yard setback requirement to allow a variance of fifteen-twenty feet so a front porch can be built will not have a negative impact on the existing neighborhood. The replacement of the porch will not impact the visual environment since there is already a porch on the property.
5. The difficulties are self-created.

BE IT FURTHER RESOLVED, that the Zoning Board of Appeals hereby grants the Requested Variance subject to the following condition(s):

1. Payment of all fees and escrow.

Adopted:

ROLL CALL BY SECRETARY

David McNary	YES
Gerald Bowen	YES
James Agrawal	YES
Paul Donnelly	YES
Richard Perkins	YES

CARRIED

CONTINUED PUBLIC HEARINGS:

CAMP VICTORY LAKE (#21-15Z)

Location: 277 Crum Elbow Road, Hyde Park

Grid #: 6265-04-630350

Area Variance – Section 108-5.15 Bulk Regulations in Greenbelt District

Change maximum permitted building height from 35 feet to 47.5 feet for construction of a stadium-style sanctuary space.

Area Variance – Section 108-4.3G(2)(a)

Change stream corridor setback from 100 feet to 0 feet from the Fallkill Creek for a stream crossing and other construction incursions.

MOTION: Richard Perkins

SECOND: James Agrawal

To re-open the public hearing for Camp Victory Lake.

Chairman David McNary

James Agrawal

Paul Donnelly

Richard Perkins

Gerald Bowen

VOICE VOTE Aye-5 Absent-0 Nay- 0 Motion Carried

The ZBA is still awaiting SEQRA determination from the Planning Board, lead agency. There was no public comment.

MOTION: Gerald Bowen

SECOND: James Agrawal

To adjourn the public hearing for Camp Victory Lake to November 17, 2022.

Chairman David McNary

James Agrawal

Paul Donnelly

Richard Perkins

Gerald Bowen

VOICE VOTE Aye-5 Absent-0 Nay-0 Motion Carried

SHERRY DINGMAN (#22-16Z)

Location: 23 River Road, Hyde Park

Grid #: 6065-04-579169

Appeal of Zoning Administrator's decision to deny building permit on the basis of nonconformance.

MOTION: Paul Donnelly

SECOND: Gerald Bowen

To re-open the public hearing for Sherry Dingman.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay- 0 Motion Carried

Chairman McNary introduced the continued public hearing for Sherry Dingman. She made some comments concerning her case. Ms. Moss made some comments regarding her case as well. Dr. Dingman asked how to obtain town laws from the 1960s. She was told that the way forward for that was through a Freedom of Information request.

MOTION: James Agrawal
SECOND: Gerald Bowen

To close the public hearing for Sherry Dingman.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay- 0 Motion Carried

Town of Hyde Park
ZONING BOARD OF APPEALS
4383 Albany Post Road
Hyde Park NY 12538
(845) 229-5111, ext. 2

APPEAL of ZONING ADMINISTRATOR'S DECISION

**Sherry Dingman
23 River Road, Hyde Park, NY 12538
6065-04-579169**

Date: October 26, 2022

Motion: James Agrawal

The Town of Hyde Park Zoning Board of Appeals, at a meeting duly convened on **September 28, 2022**, and continued to **October 26, 2022**, reviewed the facts in Application #22-16z as submitted by Sherry Dingman; and

WHEREAS, the application was determined to be a Type II Action under Section 6NYCRR Part 617 and Section 54-7 of the Code of the Town of Hyde Park; and

WHEREAS, said application requests an Appeal from the Zoning Administrator's decision, specifically regarding Section 108-33.4E alleging the Zoning Administrator misinterpreted property records in denying the applicant's building permit; and

WHEREAS, the Board considered the materials presented by the applicant in her appeal received August 15, 2022; and

WHEREAS, the Zoning Administrator provided the Board and the applicant with the complete record used in rendering her decision; and

WHEREAS, the Board held a duly noticed Public Hearing on September 28, 2022, and continued to October 26, 2022, both during duly noticed meetings; and

WHEREAS, at said Public Hearing, all who desired to be heard were heard and their testimony recorded; and

WHEREAS, all testimony has been carefully considered and the following pertinent facts noted:

1. The applicant states that the cottage apartment existed prior to 1969 and has been used as a dwelling unit during her entire tenancy. However, the Building Department's records indicate that a permit was granted for a two-car garage; said permit was never closed out. The appellant also states that "town records" show that the structure is a "cottage apartment" with a basement. However, the records the appellant references are assessor's records. It has been long established that Building and Zoning records may vary from the Assessor's. The latter are generally based on observations while visiting a site; the former contain a chain of the original request and ultimate approvals.
2. Applicant states that the structure appears on the Town's records as a "cottage apartment" but Building and Zoning records indicate it was approved for a SF residence and at some point, a two-car garage.
3. The applicant has requested that this Board declare the "cottage apartment" an existing structure. However, the Town has no records of approvals for an accessory apartment, and there is no record of a review nor findings stating that all requirements for an accessory apartment have been met.

4. Additional public comments received from the owner of an adjoining parcel and another neighbor to the west indicate that additional improvements were undertaken by the applicant, including adding a new driveway, the removal of soil and rock to create a retaining wall, which appears to be off-site, the installation of a storage building within the side yard setback and changing the exterior doors of the two-car garage from automobile doors to a “man/woman” door with window, without first obtaining building permits or site plan and special use permit approvals. We here note that these apparent transgressions are not related to the subject of the appeal presently before the Zoning Board of Appeals.

NOW, THEREFORE BE IT RESOLVED by the Zoning Board of Appeals, that Application #22-16z, appealing the Zoning Administrator’s Building Permit Denial dated June 13, 2022, is hereby denied, and affirms the Zoning Administrator’s decision on the following grounds:

1. The Zoning Administrator established that the Town’s Building and Zoning records indicate that 23 River Road is a single-family home with an accessory two-car garage.
2. The applicant failed to supply evidence that clearly establishes her claim that the garage was properly approved as a dwelling unit or cottage apartment. As noted above, the Assessor’s records frequently do not match Town and Building records. The Assessor may directly discover unapproved and unreviewed improvements made by homeowners and add the improvements to a property card for the purposes of better estimating the home’s value.
3. The Zoning Record indicates that no Certificate of Occupancy was ever issued for the two-car garage because the Building Permit was never closed.
4. We concur with the details of the Zoning Administrator’s summary in a letter to applicant dated June 13, 2022: “The initial property card does not include a garage. The structure description from when it first appears on the property card in the Assessor’s record is listed as a two-car garage with apartment above. **Note:** Building permits were required at that time and a building permit for a garage of that dimension is on file, although the height of construction differs from the building permit application form. There is also a survey in the file from 1979 that includes the structure and it is labeled as a garage. There is no request or approval for an apartment above the garage found in the Building Department files or the Zoning and Planning files.

The Building Department records and Planning/Zoning records establish approvals and authorization for construction and uses. Although the 'cottage' is recognized in the assessors' records, there are no associated records in Building and Planning/Zoning authorizing the second dwelling unit. Likewise, there are no records in Building and Planning/Zoning for conversion of a garage into living space or to

convert part of the garage space into a third dwelling as a studio apartment. The record of use is one one-family dwelling.”

Adopted:

ROLL CALL VOTE BY SECRETARY

James Agrawal	YES
Gerald Bowen	YES
Paul Donnelly	YES
Richard Perkins	YES
David McNary	YES

CARRIED

Dr. Dingman made some more comments after the resolution to deny the appeal was approved.

KATHLEEN NICHOLS (#22-18Z)

Location: 22 Roosevelt Road, Hyde Park

Grid #: 6164-04-795395

Three (3) Area Variances -Section 105-5.15 Bulk Regulations in the Neighborhood District. Change side yard setback from 10 feet to 4.3 feet for the installation of a generator, side yard setback from 10 feet to 7 feet for installation of two LP tanks and side yard setback from 5 feet to 4.6 feet for an existing woodshed.

MOTION: James Agrawal

SECOND: Gerald Bowen

To re-open the public hearing for Kathleen Nichols.

Chairman David McNary

James Agrawal

Paul Donnelly

Richard Perkins

Gerald Bowen

VOICE VOTE Aye-5 Absent-0 Nay- 0 Motion Carried

Chairman McNary asked Ray Nichols to speak briefly regarding his application, which he did. There were no public comments.

MOTION: Gerald Bowen
SECOND: Richard Perkins

To close the public hearing for Kathleen Nichols.

**Chairman David McNary
James Agrawal
Paul Donnelly
Richard Perkins
Gerald Bowen**

VOICE VOTE Aye-5 Absent-0 Nay-0 Motion Carried

Town of Hyde Park
ZONING BOARD OF APPEALS
4383 Albany Post Road
Hyde Park NY 12538
(845) 229-5111, ext. 2

RESOLUTION TO GRANT AREA VARIANCES

**Kathleen Nichols
22 Roosevelt Road
Hyde Park, New York 12538
6164-04-795395**

Date: October 26, 2022

Motion: Richard Perkins

Resolution #22-18Z

Second: James Agrawal

WHEREAS, the applicant, Kathleen Nichols, has submitted an application for an area variance to install a 15KW generator and two LP Tanks at property located at 22 Roosevelt Road, Hyde Park, NY 12538, identified as tax parcel #6164-04-795395, in the Neighborhood Zoning District (the "Site"); and

WHEREAS, the Project is depicted on a plan sketch prepared by Kathleen Nichols, dated August 29, 2022 (the "Plan"); and

WHEREAS, the applicant seeks three area variances from Zoning Law Section 108-5.15 as follows:

1. **Two LP Tanks** - the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit a side yard setback of 4.3 feet where 10 feet is required
2. **Generator** - the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit a side yard setback of 7 feet where 10 feet is required

3. **Woodshed**- the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit a side yard setback of 4.6 feet where 5 feet is required;
And

WHEREAS, pursuant to 6 NYCRR 617.5(c)(17), the granting of an area variance for a single-family, two-family or three-family residence is a Type II action under the State Environmental Quality Review Act and is not subject to review under the Act; and

WHEREAS, a duly noticed public hearing was held on September 28, 2022, and continued to October 26, 2022, during duly noticed meetings during which all those who wished to speak were heard; and

WHEREAS, the applicable standards for considering an area variance are set forth in Town Law Section 267-b and Hyde Park Zoning Law Section 108-33.6(B)(2), which require the Board to take 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 general neighborhood or community by such grant.

NOW THEREFORE BE IT RESOLVED that the Zoning Board of Appeals makes the following findings in accordance with Section 267-b of the Town Law and Hyde Park Zoning Law Section 108-33.6(B)(2) regarding the Requested Variance:

1. The Requested Variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The generator and two LP tanks will be situated on the east side of the property, approximately 100 feet from the road and will not be especially visible at that distance. Their location to the nearest house is approximately 45 feet and was recommended by the generator installer and LP gas provider. The existing woodshed is situated on the east side of the property approximately 150 feet from the road and approximately 65 feet to the nearest house.
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. The location of the generator and LP Tanks have been especially placed to minimize underground gas piping and ensure a safe distance from the primary residence.
3. The Requested Variance is numerically substantial. The three variances will change the permitted setback from 10 feet to 4.3 feet (LP Tanks), 10 feet to 7 feet (Generator), and 5 feet to 4.6 feet (shed), which is a 57% decrease, 30% decrease and a 4.6% decrease respectively; however, this placement encroaches slightly less than the existing house and shed. Any impacts of this encroachment would be less substantial than the house itself, and any detriment to the neighborhood is far outweighed by the benefits to the applicant.
4. The Requested Variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district.

The variance request will not have a significant impact on the surrounding environment. The generator's footprint is small, and it is used infrequently. This generator is intended to be used only to provide emergency power in the infrequent black out occurrences, with the exception of brief weekly maintenance operation tests.

5. The difficulties are self-created. The applicant stated the house has needed a backup generator as long as she has owned it. The placement was chosen to minimize both noise level annoyance and minimal visual disruption.

BE IT FURTHER RESOLVED, that the Zoning Board of Appeals hereby grants the Requested Variances subject to the following condition(s):

1. Pursuant to Section 108 – 33.5 F (1), the authorized activity must commence within one year from the date of issuance, otherwise it is revoked.
2. Payment of all fees and escrow.

Adopted:

ROLL CALL VOTE BY SECRETARY

James Agrawal	YES	
Gerald Bowen	YES	
Paul Donnelly	YES	
Richard Perkins	YES	
David McNary	YES	CARRIED

OTHER RESOLUTIONS:

CHRISTOPHER ISHAK (#22-08Z)

Location: 34 Greenbush Drive, Poughkeepsie (Town of Hyde Park)

Grid #: 6163-03-382434

Area Variance – Section 108-5.15 Bulk Regulations in Neighborhood District Change maximum permitted density from 0.50 acres per dwelling unit to 0.39 acres per dwelling unit for a two-family dwelling on a 0.79-acre lot.

David McNary made some opening comments. He asked Daniel Ishak, the property manager and representative present, if he had any new information. He stated he did not. The public hearing has previously been closed.

Town of Hyde Park
ZONING BOARD OF APPEALS
4383 Albany Post Road
Hyde Park NY 12538
(845) 229-5111
(845) 229-0349

RESOLUTION TO GRANT AN AREA VARIANCE

Christopher Ishak
34 Greenbush Drive

Date: October 26, 2022

Motion: David McNary

Resolution #: 22 – 08Z

Second: Richard Perkins

WHEREAS, the applicant John Caro, on behalf of owner Christopher Ishak, has submitted an application for an area variance to increase density to allow for a two-family dwelling on a parcel slightly undersized (the “Project”) at property located at 34 Greenbush Drive, Poughkeepsie, NY, identified as tax parcel no. 6163-03-382434 in the Neighborhood Zoning District (the “Site”); and

WHEREAS, the Project is depicted on a plan entitled “Site Plan – Alterations to Residence of Mr. Christopher Ishak” prepared by Carl T. Grimm RA dated April 12, 2022 (the “Plan”); and

WHEREAS, the applicant is under an Order to Remedy after multiple complaints were made to the Town of Hyde Park regarding excessive garbage, sewage smell, unsuitable number of people residing on the Site, unregistered vehicles, commercial activity, and other property maintenance issues; and

WHEREAS, the applicant has applied for a two-family dwelling in order to remedy the situation, and a density variance is needed; and

WHEREAS, the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit a density change to 0.39 acres per dwelling unit where 0.50 acres is required to allow a two-family dwelling on a 0.796-acre lot (the “Requested Variance”); and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(17), the granting of an area variance for a single-family, two-family or three-family residence is a Type II action under the State Environmental Quality Review Act and is not subject to review under the Act; and

WHEREAS, a duly noticed public hearing was held on May 25, 2022, and continued to June 22, 2022, July 27, 2022, August 24, 2022, and September 28,

2022, during duly noticed meetings during which all those who wished to speak were heard; and

WHEREAS, ZBA members conducted a site visit of the property located at 34 Greenbush Drive on June 27, 2022 to personally observe the structure and the surrounding neighborhood; and

WHEREAS, in rendering this determination, the ZBA has considered all materials submitted with the application as well as comments made during the public hearing and additional correspondence submitted by the property owner; and

WHEREAS, the applicable standards for considering an area variance are set forth in Town Law Section 267-b and Hyde Park Zoning Law Section 108-33.6(B)(2), which require the Board to take 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 general neighborhood or community by such grant.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance with Section 267-b of the Town Law and Hyde Park Zoning Law Section 108-33.6(B)(2) regarding the Requested Variance:

6. The Requested Variance will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties. The Requested Variance will not result in an increase in the intensity of the permitted uses at the Site since it was previously, albeit illegally, used as a multi-dwelling residence. The Applicant ceased use of the third dwelling upon receipt of the Order to Remedy, and the Applicant now seeks to legalize the property as a two-family dwelling. While granting this variance exceeds the permissible density under the Town Code because it would increase the legal density from a single-family dwelling on the 0.796 acre lot to two dwellings on the same lot size, the intensity of the use would be lessened due to the removal of the third dwelling. There are unlikely to be increases in parking, traffic, garbage, or noise due to additional occupants, which are prior issues that the Applicant has shown due diligence to resolve at the Site. Moreover, the Applicant verified during the public hearing that the commercial business activities at the Site related to car repair or maintenance have stopped, which will reduce traffic and congestion. The character of the neighborhood is largely composed of single-family residences. However, there are two (2) two-family residences in close proximity to the Site, both of which are on lots smaller in size than Applicant's parcel.
7. The applicant seeks to establish a second dwelling unit at the Site. The Site is 0.796 acres and the Zoning Law requires a minimum of 0.5 acres per dwelling unit. Therefore, the Site cannot be developed or subdivided to have a second dwelling unit without violating the Zoning Law's density requirements. An alternative method for establishing two dwellings while complying with the density limitation would be to purchase adjoining property and merge it with the Site. The neighboring parcels are already developed and this is not a feasible alternative. Another alternative to legalize two dwelling units is to subdivide the property; however, this method would still require area variances as the lots created would continue to be undersized even for one dwelling unit.

8. The Requested Variance is not numerically substantial. The property is a 0.796-acre lot where the Zoning Code would require a 1.0-acre lot to accommodate a two-family dwelling. This represents a Variance of approximately 20% over the permissible density requirements.
9. The Requested Variance will likely not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district. The residential structure currently accommodates two dwelling units and the Applicant did not indicate that the structure itself will undergo any expansion or change in the size of the footprint. The Applicant previously used the lot for three dwelling units and has ceased use of the third, illegal unit. The reduction to a two-family dwelling will more than likely reduce any adverse effects or impacts on the physical or environmental conditions. While the addition of a legalized second dwelling unit has the potential to increase the number of vehicles at the Site at any given time, this is not anticipated since the parking area previously accommodated vehicles for three dwellings. Therefore, an adverse increase in pollution or contaminated stormwater runoff should not occur. The Applicant also obtained an adequate number of garbage receptacles to properly manage the refuse at the property, thus reducing the impact of debris and litter in the neighborhood caused by the Site's unkempt trash.
10. The difficulties are self-created. However, the Applicant claims to have bought the property as is, believing it to be approved for multiple families. This is further reflected in the Assessors' records, which demonstrate that the property has been listed as a two-family residence for at least the last ten (10) years and has been taxed based upon that classification. However, the expansion of the property's interior from a one-family to a two-family dwelling was illegally constructed in approximately 1992 in the absence of the necessary permits and approvals from the Town's Building Department. Additionally, the Site is not served by sewer; the Department of Health must provide authorization for any expansion under the circumstances present here. The Applicant only sought this variance to remedy a Notice of Violation and Order to Remedy dated July 10, 2021 issued by the Zoning Administrator.

BE IT FURTHER RESOLVED, that the Zoning Board of Appeals hereby grants the Requested Variance subject to the following conditions:

1. Payment of all fees and escrow.
2. Permanent removal of the third dwelling unit.
3. Apply for and obtain Site Plan Approval and a Special Use Permit from the Planning Board authorizing the two-family dwelling.
4. Apply for and obtain the necessary building permit(s) to have the illegal construction of the two dwellings legalized in accordance with State and local law.
5. Obtain the Certificate of Occupancy for a two-family dwelling within nine (9) months of the date upon which the Requested Variance was granted.

Adopted:

ROLL CALL VOTE BY SECRETARY

James Agrawal	NO	
Gerald Bowen	NO	
Richard Perkins	NO	
John Scileppi	ABSENT	
David McNary	NO	DENIED

OTHER BUSINESS:

Chairman McNary asked for a motion to accept the September 2022 minutes. Gerald Bowen made the motion, and Richard Perkins seconded the motion.

ADJOURN:

Chairman McNary asked for a motion to adjourn. James Agrawal made the motion and Chairman McNary seconded the motion. The meeting adjourned at 7:02 PM.