

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

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HYDE PARK, NY

RESOLUTION TO DENY AN AREA VARIANCE

Thompson Accessory Apartment
3 Pond Road

Date: April 27, 2022

Motion: David McNary

Resolution #22-02z

Second: Richard Perkins

WHEREAS, the applicant, David Freeman on behalf of Dolores, Shelly, and Michael Thompson, has submitted an application for an area variance to bring an existing accessory apartment within a one-family dwelling into compliance (the "Project") on property located at 3 Pond Road, Hyde Park, identified as tax parcel no. 133200-6163-03-023417, in the Neighborhood Zoning District (the "Site"); and

WHEREAS, the Project is depicted on a site plan entitled "Accessory Apartment for Thompson Residence," prepared by D. Freeman Architect and dated December 15, 2021, as well as interior floor plans prepared by same and dated January 14, 2022 (collectively, the "Site Plan Set"); and

WHEREAS, the applicant seeks an area variance from Zoning Law Section 108-5.15 to permit a density of two dwelling units on a 0.39-acre lot (~5.13 DU/acre) where a maximum average density of two dwelling units per 1 acre is required (2 DU/acre) (the "Requested Variance"); and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(17), the granting of an area variance for a one-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 opened on March 23, 2022 and closed on April 27, 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 cause an undesirable change in the character of the neighborhood and/or a detriment to nearby properties. The Requested Variance will result in an increase in the intensity of the permitted uses at the Site, which is already undersized for a one-family dwelling. Legalizing the accessory apartment would increase the density from a single-family dwelling on the 0.39 acre lot to two dwellings on the same lot size, which exceeds the maximum permissible density under the Town Code. The increased intensity of the use of the Site may also cause an increase in parking, traffic, and noise due to additional occupants. The potential for more frequent turnover in occupants within an accessory apartment may also diminish the largely one-family character of the neighborhood, especially on Pond Road where the nearby properties are single-family only. The neighboring properties would be affected by the increased density that would occur with the legalization of the accessory apartment in the one-family dwelling.

While not determinative, the property deed dated August 18, 2004 and recorded August 27, 2004 contains a restrictive covenant that only one one-family house shall be erected or constructed on the lot. This deed restriction was memorialized in the prior deed dated September 4, 2002 and recorded September 6, 2002, which was conveyed to the current owner via the 2004 deed.

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 applicant seeks to establish a second dwelling unit at the Site. The Site is 0.39 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. The only way to establish two dwelling units (i.e. one-family dwelling and an accessory apartment) and comply 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.
3. The Requested Variance is numerically substantial, as the permitted maximum average density for the Site will increase by over 100% since it will double the number of permitted dwellings per acre.
4. The Requested Variance may have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district. The conversion of the structure to include an accessory apartment may require an increase in parking area. The addition of a second dwelling unit has the potential to increase the number of vehicles at the Site at any given time, which could adversely contribute to pollution and contaminated stormwater runoff. The applicant has indicated the property owner's intent to sell the property. Should that occur and should the number of occupants of the accessory apartment increase, then these impacts become more likely. Moreover, the Dutchess County Health Department has determined that the private water and sewer arrangement does not currently meet the Department's standards, which may be causing potential negative environmental impacts related to the well and sewage disposal system.

5. The difficulties are self-created. The property owners constructed the accessory apartment in the absence of a lawfully-issued building permit and without applying for the requisite area variances. The difficulties that followed occurred solely because the property owners failed to comply with the requirements of the Town Code and now seek to legalize an illegal accessory apartment.

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

1. 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

Recorded by,



Sarina Teuschler
Secretary to the Zoning Board of Appeals