

Town of Rockland
Zoning board of Appeals
April 14, 2021
#1-21 Area Variance
WW. Kocher - Davidsons General Store

Public Hearing Convened at 7pm by zoom

W.W. Kocher seeking Area variance to reopen Davidsons General Store at 2 Goff Rd. Livingston Manor - DeBruce, NY

Mr. Kocher introduced his plan to re-open the General Store at 2 Goff Road and stated that since it had been closed since the 1963 he was no longer grandfathered and new zoning regulations have been passed regarding setbacks. Minimum setbacks required are 12.5 side and 25 back and there is a corner which is 4.5 feet from present property line.

Member Schultz asked about buying land from neighbors. Applicant is part owner with 7 siblings and stated that this would not be a possibility but will be allowed to lease enough land for parking and already has sewer easement.

Member Keuhn asked about existing building and a discussion about foot print ensued. Mr. Kocher indicated that other than the missing front porch roof being restored there would be no change to exterior footprint of building.

Member Casey stated her view about restoring a piece of town history but wanted to know about any possible legality. Chairman Riegal outlined the issues of precedent and that whatever decision is made it must be defensible.

Mr. Theodore counsel for applicant reiterated the position that this would be a positive thing for the neighborhood with no buildings next door and though it might appear to be a significant setback variance percentage wise, if it had more recently closed for business it would most likely have been grandfathered.

Member Smith also stated his positive view on what the store could do for the local community but also wanted to make sure there were no legalities we were missing.

Public hearing was closed at 7:19 pm

Town of Rockland
Zoning Board of Appeals
Regular Meeting April 14, 2021 at 7:21 pm

Chairman Riegal opened the regular meeting with the pledge to the flag.

Approval of Previous Minutes

Previous minutes of October 14, 202 were corrected. Under Zoning Board Action replace #3 with:

- “ This Use Variance is contingent upon appearing before the Town of Rockland Planning Board with an amended site plan as directed by letter from Code Enforcement Officer dated: June 17, 2019.”

Chairman Riegal stated that single event catering on private land mentioned in the current version #3 was discussed but it was already allowed before the variance was applied for. This will line up with the letter of finding issued by the Chair to the applicant dated 10/15/20.

Motioned made and seconded to correct the minutes and by unanimous consent the previous minutes were approved as corrected and amended.

Case Review discussion

Continued discussion regarding leased property next door showing on the site plan. After a vigorous discussion regarding the setback rules and possible precedents All members felt that this project was a positive one though there was some concern that precedent could be set.

Chairman Riegal stated that all decisions of the ZBA need to be defensible and if an applicant were to approach the board in the future and want the same set back in the RC district they would have to meet the same criteria:

His decision to vote for granting the variance was based upon the following:

1. It is an existing Structure – not one to be built
2. There is well documented Historical value to the building – tearing it down would destroy one more part of Town of Rockland History
3. The historical use of the building is the same as requested purpose (though use was abandoned before new zoning)
4. Side or Back? Corner is the point of measurement as there is no lateral parallel point of measurement.
5. Pentagonal shape of lot inherited by Davidson and Kocher so this situation is not of the applicant's making.
6. Will be generating sales tax and service to the community.
7. The particular service is sorely needed and requested by the community
8. There exists no building next door and, in fact there is a linkage with right of ways for parking, deliveries and easements for leach field with contiguous property on the site plan and this would be part of any granting of the variance.
9. Overwhelming community support (Close to 100 signatories to various letters and emails) not one opposed.

CEO Gabbard did raise a point that even though the corner of the building is 4.5 feet there are still definable front and back set-backs in the code even with non-parallel lot lines.

A discussion ensued regarding the building codes as it related to a necessary fire wall between the building and the home next door but that this would not impact the footprint. It was agreed that our purview of this case is the set back issue only and that any other issues would be addressed by the Planning Board and the Building Inspector.

With no further discussion the Board moved into the **Standard of Review process.**

ZBA: Standard of Review: Area Variance

Zoning Board of Appeals must balance the benefit to the applicant versus detriment to the health, safety and welfare of the neighborhood. The burden of proof lies with the applicant. Factors to be assessed:

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

Discussion: On the contrary, the change will be a positive one with the addition to the neighborhood of a restored and functioning piece of town history.

Resolution: There will be no undesirable change produced by granting this variance

By _____ A. Riegal _____ Seconded _____ E. Casey _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
Arthur Riegal – Yes Daniel Smith - Yes

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Discussion: Not unless this historical building is torn down and rebuilt aligning with set back and lot lines.

Resolution: No other method is feasible for the applicant to pursue this project other than this area variance

By _____ P. Keuhn _____ Seconded _____ D. Smith _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
Arthur Riegal – Yes Daniel Smith - Yes

3. Whether the requested area variance is substantial.

Discussion: Since the change in zoning laws for the RC district this does constitute and substantial changing greater than the 50% relief typically granted

Resolution: The area variance is substantial

By _____ A. Riegal _____ Seconded _____ S. Schultz _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
Arthur Riegal – Yes Daniel Smith - Yes

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

Discussion: As previously discussed the variance and resulting project will have a positive impact on the physical neighborhood athletics and will have no adverse environmental impact.

Resolution: No adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

By A. Riegal Seconded P. Kuehn

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

5. 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 area variance.

Discussion: Since the survey was based upon records dating back to the 19th century and predate even the previous owner the setback issue was not self-created.

Resolution: The difficulty was not self-created

By A. Riegal Seconded P. Keuhn

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

Zoning Board Action

Approve Deny Approve with conditions (below) X

The area variance as requested by the applicant is hereby granted subject to enough leased contiguous property to meet the requirements of the zoning code re: setbacks.

Resolution by A. Riegal _____ Seconded S. Schultz _____

Roll Call Vote

Perry Kuehn – Yes Sheila Schultz – Yes Emily Casey – Yes
Arthur Riegal – Yes Daniel Smith - Yes

Motion to adjourn made and passed by common consent at 8:01 pm