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**Town of Shawangunk
Zoning Board of Appeals
November 15, 2023**

Minutes of a Public Hearing held by the Town of Shawangunk Zoning Board of Appeals on November 15, 2023, at 7:00 PM at the Town Hall, 14 Central Avenue, Wallkill, New York, County of Ulster for the following:

Present Were: Mr. Dennis Arluck, Chairman, Mr. John Russo, Mrs. Susan Wiand and Mr. Ryan Reid as Members, Mr. Richard Hoyt, Town Attorney, Kathy Ebbrell, Zoning Board Secretary, and members of the public.

The meeting was called to order at 7:00 PM. Mr. Arluck led the Zoning Board in the pledge to the flag.

Approval of Minutes: A motion was made by Mr. Arluck and seconded by Mr. Russo to table the approval of October 18, 2023, minutes. **Vote:** Mr. Russo – Aye, Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye.

All Public Hearings remain open for one hour.

Public Hearing:

None

Public Hearing Continuations:

Darla Hall – TM #106.50-1-35 (HWG) 1460 Route 208, Wallkill, NY 12589 - §177-23.2 – Variance for Accessory Dwelling Unit:

Mr. Russo recused himself from the discussion reviewing all the information submitted for this Public Hearing continuation. The Zoning Board acknowledged receiving additional information from Ms. Hall regarding living quarters for a caregiver.

A motion was made by Mr. Arluck and seconded by Mrs. Wiand to close this public hearing. Vote: Mr. Russo – Abstain, Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye.

Mr. Richard Hoyt read the drafted decision for this application - see attached. This completed application was well researched and the Board has reviewed everything submitted.

A motion was made by Mr. Reid and seconded by Mrs. Wiand to deny this application (decision attached). Vote: Mr. Russo – Abstain, Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye.

Zoning Board of Appeals
November 15, 2023
Page 2 of 2

Christopher Sparaco/NY USLE Bruynswick Road I LLC – TM #99.2-6-10 (RAG-4) 2319 Bruynswick Road, Walkill, NY 12589 - §177-23.1.E(3)b) – Solar Energy System – Variances for 7% Lot Coverage, 50' Area for Vegetative Buffer and 13.9 Acres Clearing:

There was no one present for this application and there was no additional information provided.

A motion was made by Mr. Russo and seconded by Mr. Arluck to continue this public hearing. Vote: Mr. Russo – Aye, Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye.

Appearance:

None

There was discussion on miscellaneous zoning matters.

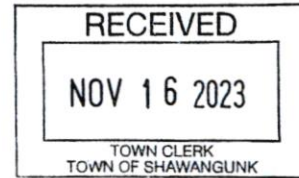
A motion was made by Mr. Russo and seconded by Mr. Reid to adjourn this meeting. Vote: Mr. Russo – Aye, Mrs. Wiand – Aye, Mr. Reid – Aye, and Mr. Arluck – Aye.

Meeting Adjourned at 7:43 PM

Respectfully submitted,

**Kathy Ebbrell
Zoning Board of Appeals Secretary**

ZONING BOARD OF APPEALS
TOWN OF SHAWANGUNK



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In the Matter of the Application of
Darla Hall for an appeal and use variance
for premises at 1460 Rt. 208 (106.5-1-35)

Decision

At a regular, duly noticed meeting of the Zoning Board of Appeals of the Town of Shawangunk, Ulster County, New York held at the Town Hall, Central Ave., Wallkill, NY 12589 on the 15th day of November, 2023, the following Resolution was moved by *REID*, seconded by *WIAND* and Members *Arlock, REID and WIAND*

voting in favor and zero (0) nays (one vacancy) and Member Russo abstaining was declared duly adopted.

WHEREAS, the following findings of fact hereby are determined:

1. This is an application for both an appeal of the Code Official's determination of April 25, 2023 and for a use variance to construct and occupy an Accessory Dwelling Unit for property known as 1460 Rt. 208, Wallkill, NY. The applicant seeks approval to convert a pre-existing, nonconforming detached garage to an Accessory Dwelling Unit (ADU).
2. The property is .68 of an acre and is situate on a corner lot with road frontage on three (3) sides – Rt. 208, Baumer Road and Chase Road.
3. The property contains a pre-existing, nonconforming two-family house with a pre-existing, nonconforming detached garage located within the required front yard. The applicant resides in one of the units in the two family house.
4. The property is located within the Hamlet of Wallkill Gateway Zoning District (HWG) where the Zoning Law prohibits new residential construction. Likewise, the HWG prohibits Accessory Dwelling Units. These uses are permitted accessory uses in six (6) other Zoning Districts in the Town subject to the standards set forth in the Zoning Law 177-23.2.
5. The minimum lot size in the HWG is one (1) acre without public water and sewer.

6. Per Zoning Law 177-14 (E) all three (3) sides of the parcel fronting to a public highway are deemed front yards. The required front yard setback is 25 feet.
7. The detached garage is located 11.7 feet from the edge of NYS Rt. 208 and within the required front yard and is located in front of the principal dwelling which is prohibited by Zoning Law 177-15 (A) 3 (C).
8. Accessory Dwelling Units are allowed in the Town wherever the Zoning Law allows single family dwellings. There are six (6) such zoning districts where these uses are allowed. The HWG does not allow new single-family dwellings, much less two-family dwellings, nor does it allow an ADU.
9. Additionally, Zoning Law 177-23.2 (D) requires that an ADU in a detached structure must meet the same dimensional standards as the principal residential use.
10. Zoning Law Section 177-16 (Density Regulations) requires that each dwelling unit on a parcel separately contain at least the minimum lot size. The applicant already maintains a two-family home on a substandard .68 of an acre parcel. If the HWG did allow new residential construction, the two-family would, by itself, need at least two (2) acres of land.
11. As pre-existing, nonconforming uses, Zoning Law 177-46 prohibits their expansion. The ADU sought by the applicant would be the third residential dwelling unit on this subsized lot in a zoning district where none are allowed.
12. As noted above, the current use of the property does not comply with the Zoning Law in many respects.

THE APPEAL

13. By written determination dated April 25, 2023 the prior Code Official denied the Building Permit application for an ADU based upon the failure to meet the various Zoning Law requirements (See Exhibit "A" attached).
14. By letter dated May 9, 2023 addressed to the Town of Wallkill (sic) and directed "To Whom it May Concern", the applicant's contractor, Richard Spoto of Woodchips Construction Inc., attempted to appeal the Code Official's April 25, 2023 denial (See Exhibit "B").
15. Both the NYS Town Law at Section 267-a(5) and the Zoning Law of the Town at Section 177-58 require that any appeal be served upon both the Code Official and on the secretary to the ZBA and contain various data as set forth in 177-58(A). None of these requirements were met.

16. Although the purported appeal dated May 9, 2023 suffers from both procedural and substantive deficiencies, and could be dismissed upon these grounds alone, the ZBA finds that the Code Official's April 25, 2023 determination was correct. The Code Official has submitted his file for review as required for any appeal and the ZBA does not find anything in that file that is new or different from the material already submitted to the ZBA.

THE VARIANCE

17. By way of an application dated June 27, 2023, Darla Hall applied for a use variance to add a second story ADU for the existing, nonconforming detached garage.
18. Pursuant to notice, the ZBA convened a public hearing on these matters on July 19, 2023 and continued the same for successive meetings until November 15, 2023 when it was closed.
19. The matter was referred to the Ulster County Planning Board for their comments per GML Section 239. By report dated 9/6/23, the UCPB left the matter for local determination but opined that the applicant does not appear to have made a case for the granting of a use variance.
20. Both the NYS Town Law and Zoning Law of the Town set forth rigorous tests in order to authorize the granting of a use variance:
 - a. The applicant must submit competent financial evidence that it cannot realize a reasonable return under existing zoning.
 - b. The alleged hardship is unique and does not apply to other properties in the district or neighborhood.
 - c. If granted, the variance will not alter the essential character of the neighborhood.
 - d. That the alleged hardship has not been self-created.

In that the variance sought is for an accessory use, which by definition is not a primary use, the applicant has a heightened burden to establish the required hardship.

21. The applicant submitted materials in August in an attempt to satisfy the 4-prong test for a use variance.
22. As to the critical "dollars and cents" proof of the inability to enjoy a reasonable economic return absent the variance, the applicant simply compared rental housing rates with commercial rental rates and

concluded that residential rental rates are .55/SF higher than commercial rates.

23. The ZBA finds that this analysis is defective as the real test is whether or not the existing uses do not provide a reasonable return? The applicant currently enjoys the use of two dwelling units on a subsized parcel in a zone district where new residential is prohibited. The applicant did not share with the ZBA the total rents it could collect from the 2 existing apartments but, per the applicant's own submittals, housing rentals command approximately \$2.23/SF. The floor area (exclusive of the porch) for the two-family including both floors is approximately 1882 SF so rents of \$1,500-\$2,000 per month per apartment can be assumed. The applicant has submitted housing rental listings from the greater Wallkill area in the \$1,500-\$1,800/mo range for one bedroom apartments with only 650-750 SF in area.

The ZBA finds that without the 3rd dwelling unit, the applicant already is enjoying a reasonable return. The cost comparison between adding a second story to the garage and adding an addition to the house is irrelevant to the required statutory test. Zoning only requires a reasonable economic return not a maximum economic return.

24. Regarding unique circumstances, every property owner in the HWG district is subject to the same rules as Ms. Hall except that she enjoys the prior, nonconforming (2) residential uses plus the non-conforming detached garage which all others do not enjoy.

The applicant's claim of right due to a personal disability is discussed below but nothing would prevent the applicant from converting the downstairs to a business (as encouraged by the Zoning Law) and renting that space to any commercial tenant.

25. As to neighborhood character, the HWG zone is the Town's statement as to the desired future uses along this NYS Rt. 208 corridor (commercial, not residential) and is completely supported in the Town's 2021 Comprehensive Plan. The fact that other properties also may be nonconforming is not a justification to grant this variance. Caselaw dictates that if a ZBA does not follow its own precedent it must later on explain why. If the use variance were to be granted on these facts, the ZBA might be compelled to keep granting them, thereby effectively emasculating the clear language of both the 2021 Comprehensive Plan and the express purpose of the HWG zoning district (See Zoning Law 177-6-J). Only the Town Board can adopt or amend the Zoning Laws and Comprehensive Plan of the Town. In granting any use variance, the ZBA must avoid usurping the powers of the Town Board.

26. Use variances cannot be granted where the alleged hardship is self-created. Here, adding a 3rd new dwelling unit where one does not exist certainly is self-created. The applicant claims that, due to a disability, her son must live at the property and care for her. The applicant has not explained why her son cannot occupy the other existing apartment other than to advise that another family member lives in the other apartment at this time.
27. The applicant argues that her disability requires that the Town grant the relief she seeks. While the Town recognizes its duty to provide a reasonable accommodation to disabled persons protected by the statutes, this does not mean that the Comprehensive Plan and Zoning laws are turned upside down to provide such an accommodation. Indeed, as explained above, granting this use variance would fundamentally alter the nature of the service, program or activity, in this case, the Zoning Law of the Town. Neither the ADA nor the Fair Housing Act requires that the Town undermine the basic purposes that its Comprehensive Plan and its Zoning Law seeks to achieve.
28. This particular applicant may or may not be a person protected by the federal statutes; the record made by the applicant is not clear one way or the other. (In her August 16, 2023 submittal the applicant cites "See SSD letter" but one was not included.) For the purpose of evaluating this application the ZBA will assume, but not concede, that the applicant is a person to be protected by the federal statutes. However, the ZBA need not determine that question as the applicant has not shown that she is being discriminated by the Town due to any alleged disability.
29. Regarding her October 2023 submittal, the applicant cannot show disparate treatment nor disparate impact as a result of her attempts to add a 3rd dwelling unit in a nonconforming structure on a subsized lot in a commercial district zone where new residential construction is prohibited. No applicant before this board, regardless of race, creed or disability, could expect that a use variance could be granted on these facts. The precedential effect of such a grant of a use variance would have Town-wide implications to the point where the ZBA will have rewritten the Zoning Law to allow ADU's in zoning districts where the zoning law does not allow them. This would be a fundamental change in the administration of zoning in the Town of Shawangunk. Upon this record, the applicant has not shown that her request for a use variance is reasonable and necessary nor has she shown an unequal opportunity to obtain all allowable zoning opportunities as afforded to the public at large.

30. The last prong of the federal test – a failure of the Town to make a reasonable accommodation – has also not been met for the reasons set forth above.
31. Zoning Law Section 177-47 authorizes the Town to terminate a nonconforming use via a period of amortization so a property owner can obtain a reasonable return on its investment but then cease the use. Here, the Town never has inferred that it will exercise its rights to terminate the nonconforming two-family dwelling nor the nonconforming garage. If a reasonable accommodation needs to be met for this applicant, and the ZBA does not concede that this is required in this case, the ZBA finds that the Town’s current forbearance from asserting its rights to a compulsory termination of the non-conforming, two family use and the nonconforming garage is such an accommodation.
32. If this applicant is, in fact, a person to be protected by the statutes, it has never been explained to the satisfaction of the ZBA why her son (or any other care-giver) cannot reside in the 2nd dwelling unit already existing on the property.
33. On November 8, 2023, the ZBA received another submittal from the applicant. In this submittal the applicant questions the applicability of the other ancillary housing opportunities in the HWG zoning district, specifically, “Apartment(s) above ground floor business” and “Living Quarters for Owner/Caretaker of structure housing a permitted use”. Both of these uses are dependent on an operating commercial business at the site. Such commercial use does not exist and is not proposed.

CONCLUSION

34. For all of the reasons set forth and upon a careful review of the entire record, the appeal is dismissed and the request for a use variance to add an ADU a third dwelling unit is denied.
35. As the within denial does not constitute an action per the SEQRA, no determination of environmental impact is necessary.

Dated: November 15, 2023

Wallkill, NY

BY ORDER OF THE ZONING
BOARD OF APPEALS OF THE
TOWN OF SHAWANGUNK

A handwritten signature in black ink, appearing to read "Dennis Arluck", written over a horizontal line.

DENNIS ARLUCK, Chairman



TOWN OF SHAWANGUNK

Building Department

Date: April 25, 2023

To: Woodchips Construction, Inc., Ms. Darla Hall

Re: Building permit application 106.50-1-33

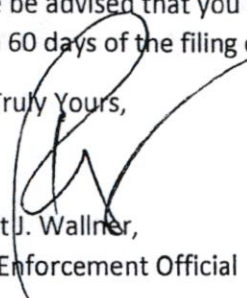
Dear Applicant and property owner:

This letter is to inform you that your building permit application for project entitled "Proposed addition for Mr. & Mrs. Robert Hall" located at 2 Chase Rd., Walkill, NY 12589 must be denied for the following reasons based on the zoning law of the Town of Shawangunk:

1. Parcel indicated on permit application (2 Chase Rd., Walkill, NY (106.5-1-33)(R-Ag 1 zoning district) is "vacant" land, no "accessory" structure may be constructed in the absence of a "primary" structure.
2. This department has not received a completed application for an Accessory Dwelling Unit. The proposed structure indicates the project description is for 2nd story garage to be used as Accessory Dwelling Unit.
3. It is noted that the Walkkill Gateway zoning district (HWG) – see local law # 1 Of 2023 §177-23.2(B) does not allow new Single Family Dwellings and, likewise prohibits Accessory Dwelling Units.
4. Suggesting the proposed project is intended for 1460 Rt 208 (SBL 106.5-1-35) (Hamlet Walkkill Gateway zoning district), the principle structure is a pre-existing, non-conforming 2 family dwelling. The Accessory Dwelling Unit application also must be denied based on Local Law 2 of 2022, §177-23.2(D) entitled "Eligibility; attached or detached accessory dwelling", which provides that an accessory dwelling unit may be constructed by the addition to the single-family dwelling or by conversion of an existing, accessory structure or building located on the same lot as the principle dwelling in existence on or before January 1, 2020. No detached accessory dwelling shall be allowed in the absence of a separate, principle single-family detached dwelling. A detached accessory dwelling shall be required to meet the same dimensional standards as the single-family dwelling applicable to the zoning district in which it is located, regardless of whether the accessory dwelling has been located in an accessory detached garage or other building.

Please be advised that you have the right to appeal the decision of this department with the Zoning Board of Appeals within 60 days of the filing of this decision.

Very Truly Yours,


Robert J. Wallner,
Code Enforcement Official

Cc: Ms. Darla Hall, reputed property owner
Filed in this office
Jane Rascoe, Town Clerk

EXHIBIT "A"



May 9, 2023

Town of Wallkill
14 Central Avenue
Wallkill, New York 12589

To Whom It May Concern;

Re: Hall - 2 Chase Road, Wallkill, New York, 12589
SBL: 106.50-1-35

This letter serves to appeal against the building department's denial of a building permit to build a second story onto the homeowner's existing garage. The building permit was denied based on local zoning laws. Specifically Local Law 2 of 2022, chapter 177-23-2. They are planning to convert one of the existing bedrooms in their three-bedroom home into a home office. Their son, who currently resides in their home, will be occupying the new apartment, which will have one bedroom. In total there will be three bedrooms between the main house and the new addition.

The Ulster County Department of Health has approved this project.

Richard Spoto, President

Signature

Date:

5/9/2023

EXHIBIT "B"