

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
August 14, 2023 @ 6:00 PM  
STILLWATER TOWN HALL**

**Present:** Chairman Donald D'Ambro  
Richard Rourke, Member  
Joseph Urbanski, Member

**Also Present:** Diana DeSanto, Attorney for the Town  
Paul Male, Town Engineer  
Lindsay Buck, Town Planner  
Lloyd Moses, Building Inspector/CEO  
Sheila Silic, Secretary  
Judy Wood-Zeno, Assistant to Planning Department

**Absent:** Christine Kipling, Member  
Charles Dyer, Member  
Ellen Vomacka, Liaison to the Town Board

Chairman D'Ambro called the meeting to order at 6:00 P.M.

**Review and Approval of Minutes of Zoning Board of Appeals:**

Mr. Rourke made a motion to approve the minutes of the June 14, 2021 meeting, seconded by Mr. Urbanski. A roll call vote was taken. The motion passed unanimously.

**ZB2023-01 DeSimone Area Variance, 74 Brightman Road**

Chairman D'Ambro recognized Mr. John & Sara DeSimone who presented the project to the Board.

**Mr. & Mrs. DeSimone:**

They had purchased the property three years ago to build a single-family dwelling. They like the Town of Stillwater community and the school district. He is the NYS Fire Marshall for the Town of Clifton Park. They applied for and received their building permit to proceed with the construction of their dwelling. The topography and the highwater table on the property is the reason that the dwelling was moved closer to the road. There is a ditch that runs along the road in front of the property which the highway department regraded and allows the water to flow into the ditch. It has been seventy days since any construction has been done on the dwelling. There is construction material lying on the ground and were not told to we needed to stop work. The Building Inspector suggested the use of sub-pumps to keep the water out of the foundation. They are requesting for an Area Variance of 7.5 Ft. for the front yard setback be reduced to 32.6Ft. The area of the house that impedes the front yard setback they could do some sort of landscaping if that pleases the Zoning Board. They had three inspection and were not told to stop building.

The three inspections were approved. They showed the Zoning Board the pictures of the water that is on the property. They stated that Mr. Van Gilder was on the site for 5-hours to the house closer to the road. They stated that there are several dwellings located on the road that are closer to the road than their dwelling. They have spoken to the neighbors and that they are in favor of the Area Variance. They showed the Zoning Board pictures of the septic system, leech field and driveway. They submitted a letter from the excavator and a neighbor.

Chairman D'Ambro opened the public hearing and asked if anyone wished to comment.

Marissa Mackay 27 Yunch Rd

Stated her property is adjacent to this project and her residence is atop the hill. IF the hill is compromised the sand will be sifting off the hill. She is in favor of the Area Variance.

Annette Nadeau 67 Brightman Rd

She has seen the amount of water that flows from the property and the drainage pipe into the ditch. She is in favor of the Area Variance.

Chairman D'Ambro asked if anyone else would like to comment and hearing none, he closed the public hearing.

Chairman D'Ambro:

Asked Ms. Lindsay Buck if she had information regarding the project.

Ms. Lindsay Buck:

Read the following timeline which have been taken using Town records and phone calls received in the Department from March of 2022 to present.

Mr. Urbanski:

Asked Mr. DeSimone if he is the general contractor for this project.

Mr. DeSimone:

Stated that is correct.

Mr. Urbanski:

Stated that you knew there was a problem when you had to have Mr. Van Gilder come back to the site.

Mr. Moses:

The three inspections were for the Footing Before Pour, Foundation Before Pour and Foundation Before Backfill. The foundation placement on the plot plan showed that it was within the setback area and the permit was issued. The inspections are based on the construction that has been completed. The Town of Stillwater requires that an as-built of the foundation location to make sure that it is within the setbacks as shown on the plot plan.

Mr. Male:

Stated that he was unaware that the building permit had been issued.

Ms. Lindsay Buck:

Asked when the plot plan changed.

Mr. DeSimone:

The plot plan changed when they hit the neighbors water line.

Richard Rouke:

Asked how did the dwelling location change.

Mr. DeSimone:

When Van Gilder came out to the site and saw that the topography needed to be changed.

Mr. Rourke:

Stated as the general contractor you should have been aware of this. Asked if test pits had been done to test the soil.

Mr. DeSimone:

Yes, his friend had done the test pits.

Richard Rouke:

Asked if you knew the property had a highwater level why did you not relocate the dwelling.

Ms. DeSimone:

They should have worked with the surveyor and relocated the dwelling.

Mr. Male:

He met with Ms. DeSimone and explained if they were to rotate of the dwelling away from the property line that the dwelling would be in compliance.

Mr. DeSimone:

That if the dwelling is rotated it will be closer to the water vein and the hill.

Ms. DeSimone:

That there was a communication breakdown between the Building/Planning Department which was not intentional.

Mr. Urbanski:

Asked if Mr. Van Gilder had told him that the dwelling was too close to the property line.

Mr. Male:

Stated that when the applicant asked about an Area Variance the Planning Department did not know that construction on the dwelling had started.

Mr. DeSimone:

That no construction had started until the Area Variance paperwork has been submitted.

Chairman D'Ambro:

Asked if he knew the difference between applying and approving of the Area Variance.

Mr. DeSimone:

Stated that he does not know how the variance process works and was unaware that he had done anything wrong until he had received a violation letter from Mr. Moses.

Chairman D'Ambro:

Stated for the application to be approved all the questions need to need to meet all the requirements. Stated that all the questions on your application did not meet all the requirements.

Ms. DeSimone:

Asked which of the questions did not meet the requirements.

Ms. DeSanto:

Stated that if the only question was self -created then the other four questions would need to meet the requirements.

Mr. DeSimone:

Asked if the application could be tabled.

Chairman D'Ambro:

Stated that is up to the Zoning Board.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2023 RESOLUTION NO. 1**

WHEREAS, John DeSimone and Sara DeSimone have submitted an application to the Zoning Board of Appeals seeking an Area Variance to encroach upon the front yard setback requirement on property located at 74 Brightman Road, Stillwater, more fully identified as Tax Map Number 234.-1-4; and

WHEREAS, the Applicants are seeking an area variance for the set-back requirement contained in Stillwater Zoning Code Chapter 210, Attachment 2, Table 2; and

WHEREAS, pursuant to §210-138 of the Stillwater Zoning Law, the Town properly and timely published a notice for public hearing conducted on August 14, 2023; and

WHEREAS, the Zoning Board of Appeals has duly considered the application and the elements necessary to consider the granting of an Area Variance by taking into consideration the benefit to the applicants if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

Now, therefore, be it

RESOLVED, that the Stillwater Zoning Board of Appeals hereby makes the following findings:

1. An undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of the Area Variance;
2. The benefit sought by the applicants can be achieved by some method, feasible to the applicants to pursue, other than an Area Variance because there were other options available to the applicants to build their house. In May 2022 the applicants were granted a building permit supported by a site plan which placed the house well within the required setbacks. It was also shown in a map provided by Town Engineer, Paul Male, prior to the public hearing held on August 14, 2023, that the applicants could have rotated the house in such a way that would allow it to fit well within the required front setback while still avoiding the high groundwater, the existing well, and all other unfavorable topography;
3. The requested Area Variance is substantial because the encroachment would be 7.2 ft. into the required front setback;
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. The alleged difficulty was self-created due to the following actions taken by the applicants:
  - A) Applicant John DeSimone chose to be the general contractor on the build despite having no experience in this role.
  - B) The applicants received a building permit based on a site plan that conformed with all required zoning regulations, however, they chose not to build in that location;
  - C) The applicants contacted the Town of Stillwater Building and Zoning Department and spoke with Senior Town Planner, Lindsay Buck, on May 17, 2023, inquiring about area variances as they believed their proposed house would encroach on the front setbacks. They were informed during this call that they were required to apply for an area variance if they wanted to build past the setbacks. At no point did the applicants inform Lindsay Buck that they already had a building permit;
  - D) After speaking with Lindsay Buck and learning of the area variance requirements the applicants began construction of a building encroaching into the front setback prior to applying for or receiving said area variance; and be it further

RESOLVED, that the application of John DeSimone and Sara DeSimone for an area variance to allow for a 7.2 ft. encroachment into the required front setback on property located at

74 Brightman Road, Stillwater, more fully identified as Tax Map Number 234.-1-4 is DENIED.

A motion by Member Joe Urbanski seconded by Member Richard Rourke, to adopt Resolution No. 1 of 2023.

A roll call vote was taken on Resolution No. 1 of 2023 as follows:

Chair Donald D'Ambro	Yes
Member Richard Rourke	Yes
Member Timothy Scrom	Absent
Member Joe Urbanski	Yes
Member Christine Kipling	Absent

Resolution No. 1 of 2023 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on August 14, 2023.

Motion to adjourn made by Mr. Rourke, seconded by Mr. Urbanski at approximately 7:20 pm.