



TOWN OF HURLEY ZONING BOARD of APPEALS
PO BOX 569/10 WAMSLEY PLACE
Hurley, New York 12443
planning@townofhurley.org
(845)331-7474. 6

Determination of Area Variance Request by Mackenzie Shivers & Matthew Derby for
File 2024-#01-Derby-SBL-38.10-5-20-AV

In the matter of Area variance request by:

Mackenzie Shivers & Matthew Derby

10 Broad St

West Hurley, NY 12491

For two (2) Area Variances: a front-yard of ten-feet (10') to Fairview Ave and a rear-yard of forty-feet (40') to the rear lot line

WHEREAS, the Applicants, Mackenzie Shivers & Matthew Derby (hereafter "Applicants"), applied to the Town of Hurley Building Department to construct a twelve-foot (12') by twenty-foot (20') two-hundred forty square-foot (240 sq. ft.) structure to be used as a studio on their property located at 10 Broad Street, tax map number 38.10-5-20 on September 6, 2023. The subject property is located in the R-2 zoning district and consists of 0.35 acres; and

I. Process

- Upon receipt of a building permit to construct a twelve-foot (12') by twenty-foot (20') two-hundred forty square-foot (240 sq. ft.) structure to be used as a studio, the Zoning Enforcement Officer, Paul Economos (hereafter "ZEO") completed a Determination on 2023-12-20 that in order to construct the studio as proposed, two (2) are variances would be required. A copy of the ZEO's Determination is annexed to this Determination as exhibit A; and
- The Determination stated that the lot is considered a Corner Lot under §210-14-Corner Lots as well as being and under-sized: 13,200square feet, lot for the density requirement of lots in the R-2 district without central sewer or water: 40,000 square feet, as identified in §210 Attachment 2: Density Control Schedule in the Town of Hurley Code; and
- Since the Applicant's proposal did not comply with the requirements in §210-51-A(3), the ZEO notified the Applicant on 2023-12-20 that they would need to either move the proposed structure or apply to the Hurley Zoning Board of Appeals (hereafter "ZBA") for an Area Variance.

II. ZBA Process

- The Applicant submitted an Appeal of the ZEO's Determination requesting an Area Variance to the Clerk for the ZBA on 2023-12-28 with the appropriate associated fees; and
- With the Application requirements being submitted by the deadline for the 2024-01-11 ZBA meeting, the Clerk placed the Application on the 2024-01-11 ZBA Agenda as New Business; and
- At the 2024-01-11 meeting, the ZBA made a Determination that under §617.5(16) granting of individual setback and lot line variances and adjustments of the State Environmental Quality Review Act (hereafter "SEQRA"), the Application met the Type II criteria and by motion, second and an affirmative vote of four (4) AYES; Zero (0) Nays, One (1) Absent, Member Andrew Shapiro; and 0 Abstention, the motion passed passed and as such thereby requiring no further action under SEQRA and no Environmental Impact Statement will be necessary; and



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- At the 2024-01-11 meeting, the ZBA reviewed the material in the Application requesting an Area Variance and determined the Application was complete and by motion, second and an affirmative vote four (4) AYES; Zero (0) Nays, One (1) Absent, Member Andrew Shapiro; and 0 Abstention a public hearing was to be held at the 2024-02-08 meeting at 7:11PM and the Clerk was directed to run the appropriate legal notice and notify the neighbors within two-hundred and fifty feet (250') from the perimeter of the property by certified mail; and
- At the regular meeting on 2024-02-08, the Public Hearing was opened at 7:11PM and the ZBA members present reviewed the materials presented by the Applicant and questioned ?????; and
- The ZBA reviewed a site plan presented and prepared by Jennifer Lucas, RA dated 2023-01-10; and
- During the public hearing, the Board heard ???????; and
- Having heard from the public during a duly noticed public hearing and some Board members having conducted a site visit, (????) the Board felt they could close the public hearing; (????) and
- By motion and second with a vote of ????? the Board left the public hearing open for two (2) additional weeks until 2024-02-22 for written comments to be submitted and then close the public hearing as of 2024-02-22; and
- The Board informed the Applicant that the Board has sixty-two (62) days from the close of the public hearing on 2024-02-22 to make their determination regarding the Variance request to be allowed to construct a fence that is eight (8ft.), which requires a two-foot (2ft.) variance. That made the Determination due by 2022-04-22; and

III. Zoning Board review of the request against the criteria for an Area Variance:

In making its determination regarding a request for an area variance, the Board shall 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 neighborhood or community by such grant. In making such determination, the Board shall also consider:

[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.

Board Discussion:

Determination: The Board determined

[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.

Board Discussion: The Board



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Determination: The Board reviewed any other possible scenarios feasible to the Applicant other than the granting of the variance for a proposed 12x20 structure to be used as a studio and determined that there are

[3] Whether the requested area variance is substantial.

Board Discussion: The request for a 12’x20’ accessory structure to be used as a studio

Determination: having considered all possibilities of character, options available against the actual Variance numbers, the Board determined the request is (is not) substantial.

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

Board Discussion: The Board determined that there would not be negative impacts to the environmental and physical conditions on the property.

Determination: The consensus of the Board was that there would not be negative impacts to the environmental and physical conditions of the property by allowing the construction of the proposed twelve-foot (12’) by twenty-foot (20’)shed with the required two (2) variances of a ten-foot (10’) front-yard variance and a forty-foot (40’) rear-yard variance

[5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board but shall not necessarily preclude the granting of the area variance. (b) The Board, when granting an area variance, shall grant the minimum variance that it shall deem necessary and adequate to alleviate the difficulty shown by the applicant and that also will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Board Discussion: The Applicant discussed that he needs more room for his family, a situation that is not self-created and that with the lot being under-sized, there are limits to where the studio can be placed

Determination:

Determination: Having weighed all the factors in the Variances request against the laws in the Town of Hurley Code and the possible positive and potentially negative physical and environmental factors, ??? motioned to approve/deny the two (2) variances request: Variance A-a front-yard variance of ten feet (10”) to Fairview Avenue and; B. a forty-foot (40’) rear-yard variance to the rear property-line; Member ??? seconded the motion. With the motion having been made and seconded, there was a call for a vote. The Clerk conducted the following is a Roll Call of the members present:

Member	Vote
Joshua Vogt, Chairman	
Alex Marra	



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Andrew Shapiro	
Orin Shands	
Kara Snyder	

Motion was carried/failed by a vote of ??? Ayes, ??? nays, ??? Absent and ??? Abstentions and the
 Variance request was approved/denied

Conditions:

1. At no time shall the proposed studio be converted or used as a residence without further considerations of a variance

Dated this ?? day of ???, 2024

Maggie Colan, Clerk

Filed with the Town Clerk on the ??? Day of ??? 2024

Tracy Kellogg Town Clerk
