

TOWN OF ROCHESTER

50 Scenic Drive • P.O. Box 65 • Accord, NY 12404
Area Code 845

Town Clerk 626-7384
Supervisor 626-3043
Highway Dept 626-7221
Assessor 626-0920
Transfer Station 626-5273



Code Enforcement 626-2433
Planning Board 626-2434
Zoning Board 626-2434
Court House 626-2522
Youth Commission 626-2115

Applicant: Selene DiFlamminio & Marina Kudryavtseva (Applicant/Owner)

Reason for Request: The application proposes an Area Variance to implement a lot line improvement as the current property line runs through a cabin on a neighboring lot.

Location: 21 Ski Slope Road, Kerhonkson, NY 11249 **Total Acreage:** +/- 1.60 acres

S/B/L: 59.7-2-31

Zoning District: R-2 Low Density Residential

Code Enforcement Determination: Area variance required

Zoning Board of Appeals Application: 20/264

SEQR Type: Type II

ZBA Application filed: 7-15-2020

SEQR Determination: N/A

EAF filed: N/A

Other Agency Referrals: N/A

Documents considered by the Zoning Board of Appeals for review:

- 07-15-2020- DiFlamminio & Kudryavtseva-Zoning Permit Application-Area Variance
- 08-11-2020- DiFlamminio & Kudryavtseva-ZBA Application
- 08-17-2020- DiFlamminio & Kudryavtseva-Photos of property (3)
- 11-10-2020- DiFlamminio & Kudryavtseva -Survey Map showing proposed Lot Line Improvement.
- 04-21-2021- DiFlamminio & Kudryavtseva- Survey Map showing existing lot line
- 06-17-2021- DiFlamminio & Kudryavtseva-Letter from Trails End Residents Association

Notice of Public Hearing:

- Published in the Shawangunk Journal, October 7th, 2021 Edition
- Notice by mail to known landowners within 500' and application referral agencies: 09-22-2021
- Posted on the Town of Rochester Clerk bulletin board: 10-4-2021

Date(s) of Public Hearing: 10/21/2021

Place: Harold Lipton Community Center, 15 Tobacco Road, Accord, NY

Public Comment: (see Minutes of Town of Rochester Zoning Board of Appeals - 10/21/2021)

The Town of Rochester Zoning Board of Appeals hereby makes the following findings with respect to the specific criteria for area variances as set forth in the of the Town's Code local law § 125.18(A)2

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.

a) Yes No

Finding: Approval of the Area Variance will not negatively impact the surrounding community or pose any apparent detriment to neighboring properties. The applicants are beginning with two non-conforming lots and the proposed variance will result in two non-conforming lots.

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.

b) Yes No

c) Finding: The alternative method considered to achieve the sought-after benefit involves physically moving the cabin. The applicant has described challenges in the topography and an existing natural barrier comprised of trees that make this approach impractical. In addition, the physical environment of the lot would be disturbed as septic, well and utility lines would need to be relocated.

3. Whether the requested area variance is substantial.

- a) Yes No
- b) Finding: The requested lot line adjustment is not deemed substantial. One lot will be reduced from 1.6 acres to 1.2 acres and the adjoining lot will be increased from .57 acres to 1.0 acre. Both begin as non-conforming and end as non-conforming, however, it is noted that the adjustment will result in a less lopsided, and more balanced, lot configuration between the two. This offsetting change in lot lines, when taken together, results in a minimal variance overall. Also noteworthy is the fact that this lot line adjustment would result in establishing an approximate 40' side yard setback from the newly established lot line to the cabin. The current lot line travels directly through the cabin, leaving no side yard setback whatsoever. The proposed lot line adjustment would cure this shortcoming and result in a setback consistent with the Town of Rochester Zoning Law, Schedule of District Regulations pertaining to lands located in a R-2 Low Density Residential District, which calls for a 40' side yard setback.

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

- a) Yes No
- b) Finding: Moving the lot line as proposed would have no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

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.

- a) Yes No
- b) Finding: The applicant purchased the lots in question, with their lot lines drawn and cabin already built. Nevertheless, given that the homes on each lot have separate wells, septic and electricity, it appears reasonable to conclude that the applicant believed that there was no such issue with the lot lines at the time of purchase. Such an assumption, when made in good faith, as it appears it was in this case, does not meet the ordinary definition of a self-created difficulty. This view is further supported by the fact that the original driveway features provided separate access to each respective property. Lastly, as mentioned above, the proposed variance would establish a side yard setback in keeping with Town Code.

Determination based on the above factors:

Granted **Denied**

It is hereby determined by the Town of Rochester Zoning Board of Appeals that the request for an Area Variance is XX.