

Applicant: Tow Path Road LLC – John Sturges as Agent

Reason for Request: Application for Side yard and High water mark area variance. Application was amended on July 22, 2021 to seek variances of 6.5 feet for the side yard and 19 feet to the high water mark.

Location: 442 Tow Path Rd, Accord, N.Y. **Total Acreage:** +/- 1.7

S/B/L: 77.2-1-48 **Zoning District:** R-5

Code Enforcement Determination:

- Parcel is in the R-5 zoning district
- Parcel is +/- 1.7 acres
- Applicant proposes the erection of a single-family residence
- Applicant does not meet the 100' setback set from the high-water line
- Proposed structure is +/- 70' away from the high-water line
- Applicant would need a +/- 30' variance

Application was amended July 22, 2021 – to a Side Yard setback of 6.5' and a r 19' setback to the High Water Mark setback with the adjusted dwelling siting as shown on the revised site plan dated July 19, 2021

ZBA Application filed: March 18, 2021

SEQR Type: Type II **SEQR Determination:** N/A

EAF filed: N/A **Other Agency Referrals:** N/A

Documents considered by the Zoning Board of Appeals for review:

1. Sturges.CEO_letter_to_ZBA.2021-04-23.pdf
2. Sturges.Zoning_Permit.2021-04-23.pdf
3. Sturges.Pre_App_Application(No number).2021-04-26.pdf
4. Sturges.Ag_data_statement.2021-04-26.pdf
5. Sturges.EAF_Part_I.2021-04-26.pdf
6. Tow Path Cabin Building Permit 4-22-2014.pdf
7. Scanned from a Xerox Multifunction Device (1).pdf
8. 2021-6-25_SturgesSurvey.jpg
9. 2021-7-2_Sturges_emailchain.pdf
10. 2021-7-7_Sturges_siteplan.pdf
11. 2021-7-7_Sturges_emailchain.pdf
12. 2021-7-12_Sturgis_siteplan.pdf
13. 2021-7-19_Sturges_siteplan.pdf
14. 2021-7-19_Sturges_siteplan_magnified.docx
15. 2021-7-22_Sturges_amendedapp.pdf
16. 2021-7-23_Sturges_PHnotice.docx
17. 2021-8-11_Sturges_letterofagent.pdf
18. 2021-8-16_Sturges_amendedapp.pdf
19. SturgesAV_ECCpacket.pdf
20. 2021-9-16_SturgesAV_ECCemail.pdf
21. 2021-10-7_SturgesAV_ECCcomments.pdf
22. 2021-11-3_SturgesAV_responseletter.pdf

Notice of Public Hearing: Town of Rochester Website and Shawangunk Journal, Published in the July 30th, 2021 edition

Date(s) of Public Hearing: August 19, 2021 **Place:** Harold Lipton Community Center, at 15 Tobacco Road, Accord, NY

Public Comment: (see Minutes of Town of Rochester Zoning Board of Appeals)

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 § 140-12.

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
- b. Finding: *There is no significant change in the character of the neighborhood or district.*

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.

- a. Yes No
- b. Finding: *The proposed dwelling has yet to be constructed. The opportunity to redesign and/or reposition the structure in a way to either eliminate or reduce the need for the variance is feasible.*

3. Whether the requested area variance is substantial.

- a. Yes No
- b. Finding: *The requested side yard variance for the proposed dwelling is 6.5 feet. This is moderate at 13% of the 50 foot requirement and below the allowable maximum of 50% for side yard variance for a nonconforming lot per code §140-43 – “Use of existing nonconforming lots of record”.*
- c. Yes No
- d. Finding: *The requested variance to the High Water Mark setback to accommodate a proposed porch is 19.0 feet, a significant value of 19% of the required 100 feet.*
- e. Yes No
- f. Finding: *The proposed dwelling without the porch would require a 5.0 foot variance to the High Water Mark setback or 5% or the 100 foot requirement.*

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: *The New York State Department of Environmental Conservation Hudson Valley Natural Resource Mapper indicates the subject property is within an area known for rare plants, rare aquatic and terrestrial animals. The woodland and forest on, and surrounding the property, is classified as a “Core Forest” indicating it is especially important for maintaining habitats for sensitive wildlife.*

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 topography and waterfront location of the lot is not peculiar to the district. The hardship results from the proposed placement and size of the dwelling and porch.*

Determination based on the above factors:

It is hereby determined by the Town of Rochester Zoning Board of Appeals the request for an area variance for a side yard setback of 6.5 feet is GRANTED with the condition the proposed dwelling is constructed with a footprint consistent with the site plan as submitted by the applicant in the document labelled “2021-7-19_Sturges_siteplan_magnified”.

It is hereby determined by the Town of Rochester Zoning Board of Appeals the request for an area variance for as High Water Mark setback of 19.0 feet is DENIED.

It is hereby determined by the Town of Rochester Zoning Board of Appeals the request for an area variance for as High Water Mark setback of 5.0 feet is GRANTED with the condition the proposed dwelling is constructed with a footprint consistent with the site plan as submitted by the applicant in the document labelled “2021-7-19_Sturges_siteplan_magnified”.

The determination is consistent with the Town of Rochester comprehensive plan concerning protections for environmental quality and natural resources by minimizing disturbance to wildlife and vegetation.

