

ZONING BOARD OF APPEALS
Town of Marlborough
21 Milton Turnpike
Milton, New York 12547

RECORD OF FINDINGS

Name of Applicant(s): Royal Energy Properties LLC

Name of Property Owner: Royal Energy Properties LLC

Property Location: 1666 -1672 Route 9W, Town of Marlborough (the "Property")

Tax Grid Number: 103.3-3-68

Published in:

Dates of Public Hearing: April 11, 2019

Place of Hearing: Town of Marlborough Town Hall
21 Milton Turnpike
Milton, New York 12547

The matter having come to be heard before a duly convened meeting of the Zoning Board of Appeals, and the facts, matters and evidence produced by the applicant and interested parties have been duly heard, received and considered and due deliberation having been had, the following is the record of findings.

Description of application:

The applicant seeks a rear yard setback variance of 40 feet. This will allow a setback of 35 feet where 75 feet is required by Schedule I of the Town of Marlborough Town Code.

The applicant seeks a front yard setback variance of 6 feet. This will allow a setback of 69 feet where 75 feet is required by Schedule I of the Town of Marlborough Town Code.

In addition to the oral testimony submitted at the public hearing, the following documents were considered by the ZBA in reviewing the variance application:

1. Application dated February 28, 2019.

SEQRA

The ZBA conducted an uncoordinated review. As the applicant had prepared a long form EAF Part I, the Board prepared parts 2 and 3. A negative declaration of significance was issued.

Consideration of Statutory Criteria

In making its determination on an area variance application, this Board must take into consideration the benefit to the applicant(s) 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 doing so, this Board must weigh the following statutory criteria: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting an area variance; (2) whether the benefit sought by the applicant(s) can be achieved by some method, feasible for the applicant(s) to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (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.

1. Character of the Neighborhood and Detriment to Nearby Properties

The property is located on Route 9W, an area with many commercial properties. The proposal is to replace the existing cold storage building with a new structure so the use is consistent with the existing use of the property. The new structure will be more in conformance with the setback requirements in this district than the existing structure. Therefore, the new building is in keeping with the character of the neighborhood.

There is nothing in the record to believe this would be a detriment to nearby property.

2. Alternative Methods for Achieving Benefit Sought by Applicant

There is no reasonable alternative method for the applicant to achieve the benefit it seeks. The Board inquired as to whether the structure could be modified to fit within the existing building square, but site conditions prevent that.

3. Substantiality of Variance Requested

The applicant seeks a variance of 6 feet in the front yard or a variance of 8%. This is not substantial

The applicant seeks a variance of 40 feet in the rear yard or a variance of 53%. While the amount of the variance is substantial, the Board has also considered that this is an improvement upon the existing site condition which is much closer to the rear lot line. Therefore, the Board finds this variance is not substantial in impact.

4. Effect or Impact on Physical or Environmental Conditions in the Neighborhood

There was no evidence that the variance would result in an adverse effect or impact on the physical or environmental conditions in the neighborhood.

5. Self-Creation of Difficulty

Generally, a hardship is self-created when the property is acquired subject to the restrictions from which relief is sought. *See Sasso v. Osgood*, 86 NY2d 374 (1995). Therefore, this hardship is self-created. However, the statute specifically provides that this will not necessarily preclude the granting of the variance and, therefore, the Board must consider this along with the other four factors.

Dated: Marlborough, New York
April 11, 2019

Penny Cashman, Secretary

William Giometta, Chairman

Filed, Office of the Town Clerk, Town of Marlborough, New York

Town Clerk