



TOWN OF OSSINING
BUILDING & PLANNING DEPARTMENT
101 ROUTE 9A, P.O. Box 1166
OSSINING, N. Y. 10562
PHONE: (914) 762-8419 FAX: (914) 290-4656
www.townofossining.com

ZONING BOARD OF APPEALS

TOWN OF OSSINING _____ X

In the Matter of the Application of

Matthew Weiss
6 Minkel Road, Ossining, NY

RESOLUTION

For a variance from the provisions of the

Zoning Code of the Town of Ossining
_____ X

WHEREAS, this is an application by Matthew Weiss ("Applicant") for a variance from the provisions of the Town of Ossining Zoning Code ("Zoning Code") § 200-21(A) and 200 Attachment 2 (Bulk Regulations for One-Family Residences) related to a rear yard setback on the property.

WHEREAS, the Applicant is the owner of a parcel of land located at 6 Minkel Road, Ossining, New York, designated on the tax maps of the Town of Ossining as Section 81.17, Block 1, Lot 42 in the R-20 Zoning District (the "Property").

WHEREAS, the Applicant is seeking a variance from Zoning Code § 200-21(A) and 200 Attachment 2 (Bulk Regulations for One-Family Residences) to construct a new deck in the rear of his property that would reduce the rear yard from 37.96 feet to 17.46 feet where the Zoning Code requires a minimum rear yard setback of 34 feet, thus requiring a 20.5 foot variance.

WHEREAS, in furtherance of the application, the Applicant submitted a signed and sealed plan set prepared by Carl Theodore Grimm, R.A. consisting of: (1) Site Plan (Sheet A-1), (2) Footing and Framing and Floor Plans (Sheet A-2), Right Side and Rear Elevation (Sheet A-3) and (4) Left Side and Front Elevation (Sheet A-4) (hereinafter collectively referred to as the "Approved Plans").

WHEREAS, pursuant to the applicable provisions of law and after due notice and publication, the public hearing was opened on August 17, 2020.

WHEREAS, having had the opportunity to inspect the site, review the application, hear from the Applicant, members of the public, and the Town's consultants, the ZBA closed the public hearing at the August 17, 2020 meeting.

WHEREAS, after having investigated this application and having given full consideration to all of the proofs and evidence before it, this Board determined as follows:

IT IS HEREBY RESOLVED, this is a Type II action pursuant to the State Environmental Quality Review Act ("SEQRA") and therefore no further environmental review is required.

IT IS HEREBY FURTHER RESOLVED, the Board found as follows:

In accordance with New York Town Law § 267-b and Zoning Code § 200-45, the Board has considered the statutory criteria for granting an area variance and determines as follows:

- a. There will not be an undesirable change in the character of the neighborhood or a detriment to nearby properties by the granting of the area variance. The Property is a corner lot with two front yards that will remain open and the position of the deck will only be visible in the rear yard. In addition, the neighbor's house to the rear of the Property is located a significant distance from the adjoining property line and there are a substantial amount of trees creating a buffer between the two lots.
 - b. The benefit sought by the Applicant could not be achieved by some other method feasible for the applicant to pursue other than seeking the requested area variance. During the public hearing, the Applicant stated that he considered constructing the deck in a zoning-compliant location in the front portion of the house, but privacy concerns and the ability to directly access the deck from the house led to the decision to propose the deck in the rear yard and seek the requested variance. If constructed in the front portion of the house, the deck would be openly visible from Minkel Road and would require the installation of trees or a fence to block the deck from public view. Placing the deck in the rear yard, on the other hand, would provide substantial privacy without the need to add trees or a fence. Additionally, if the deck was constructed in the rear yard, then the applicant could connect the deck directly to the house by adding a doorway off the dining room, which would not be possible if the deck was in another location. Further, the front yard's elevation would prevent the ability to access underneath the deck that would be possible if constructed in the rear yard.
 - c. The Board finds that the variance is not substantial in light of the significant space and screening between the proposed location of the deck in the rear of the Property and the location of the house on the adjoining lot to the rear of the Property. However, to the extent the variance is considered substantial, this in and of itself is not a basis to deny the variance where there will be no detriment to the character of the neighborhood, there is no feasible alternative location for the deck and there will be no adverse environmental impacts.
 - d. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The deck would not interfere with the existing trees in the rear yard and would also leave the front yard open. And as noted above, there is substantial space and screening between the Property and the adjoining parcel to the rear of the Property.
 - e. The difficulty is self-created to the extent the Applicant wants to build the deck in a location that does not comply with the setback requirements in the Zoning Code, but this factor is not determinative and does not preclude the granting of the area variance where the balancing test establishes that the benefit to the Applicant will outweigh any potential detriment to the community.
2. The Applicant's request for a variance from Zoning Code § 200-21(A) and 200 Attachment 2 (Bulk Regulations for One-Family Residences) to permit a rear yard setback of 17.46 feet to allow the construction of the deck as provided on the Approved Plans is approved.

3. This decision shall constitute the decision of the Zoning Board of Appeals pursuant to Zoning Code § 200-46(G).

Dated as of August 17, 2020

<u>In Favor:</u>	5 (Sal Carrera, Chairman; James Blair, David Krieger, David O'Neil, David Whitlinger
<u>Opposed:</u>	0
<u>Abstain:</u>	0
<u>Absent:</u>	0

PUBLIC HEARING
TOWN OF OSSINING ZONING BOARD OF APPEALS
MR. & MRS. MATTHEW WEISS
6 MINKEL ROAD
SBL 81.17-1-42

Zoom Meeting

August 17, 2020

7:30 p.m.

PRESENT:	SALVATORE CARRERA	- Chairman
	JAMES BLAIR	- Member
	DAVID KRIEGER	- Member
	DAVID O'NEIL	- Member
	DAVID WHITLINGER	- Member
	THOMAS WILLS	- Member
ALSO PRESENT:	CHRISTIE TOMM ADDONA	- Town Attorney
	JOHN HAMILTON	- Building Inspector
	SANDY ANELLI	- Recording Secretary

Sal Carrera: Good evening, ladies and gentlemen, this is the August 17 meeting of the Zoning Board of Appeals for the count of Ossining. My name is Sal Carrera Chairman and joining me this evening are members of the Zoning Board of appeals Town Attorney, Building Inspector and Secretary.

Sal Carrera: I'd like to have members of the board introduce themselves for the record.

Sandy Anelli: Sandy Anelli Secretary

David O'Neil: David O'Neil, Member

David Krieger: David Krieger, Member

James Blair: James Blair, Member

David Whitlinger: David Whitlinger, Member

Tom Wills: Tom Wills, Alternate Member

Christie Addona: Christie Addona, Attorney.

John Hamilton: John Hamilton, Building Inspector.

Sal Carrera: Thank you.

Sal Carrera: I'll read the public notice and then request the applicant, or the representative to give a brief explanation of the relief sought. Anyone that has a comment can basically give their name and address during the public hearing part of these hearings. The first hearing this evening will be that of Matthew Weiss:

Notice is hereby given that a Public Hearing of the Town of Ossining Zoning Board of Appeals will be held on **Monday, August 17, 2020** at 7:30 p.m. **THIS MEETING WILL BE HELD VIA VIDEO CONFERENCING** Pursuant to Governor's Executive Order 202.1 dated March 12, 2020 and Executive Order 202.15 dated April 9, 2020 and subsequently extended. Members of the public can join the meeting via computer or mobile app on Zoom using the link below:

Join Zoom Meeting Monday August 17, 2020 at 7:30 p.m.

<https://us02web.zoom.us/j/89265315738>

Meeting ID: 892 6531 5738

Alternatively, you can call into the meeting from any phone by dialing the following number:

One tap mobile

+1-929-205-6099, 89265315738# US (New York)

Meeting ID: 892 6531 5738

Find your local number: <https://us02web.zoom.us/j/kd0BixlKC>

If you have any questions about the Zoom meeting process, please contact the Town of Ossining Building Department at 914-762-8419

The Hearing is on the application of Matthew Weiss, 6 Minkel Rd., Ossining, NY, in accordance with the Code of the Town of Ossining, Zoning Section 200-21 A. Bulk Regulations Table 200 Attachment 2. The applicant is seeking a variance to construct a new deck that will reduce the rear yard from 37.96' to 17.46' where 34' are required.

The property is located at 6 Minkel Road, in the unincorporated area of The Town of Ossining, NY, owned by Matthew and Vivian Weiss and is identified on the Tax Map of the Town of Ossining as Section 81.17, Block 1, Lot 42, located in the R-20 One-Family Residence District.

All interested persons are invited to attend the Public Hearing on video conference (Zoom), and/or send comments by email to: www.bldgdept@townofossining.com or send comments by regular mail to Town of Ossining Zoning Board of Appeals, P.O. Box 1166, Ossining, NY 10562.

Application & Site Plan prepared by Carl T. Grimm, Architect, titled Alteration to the Residence of Mr. & Mrs. Matthew Weiss, 6 Minkel Road, Ossining, NY dated July 13, 2020 are available for public inspection online at: <https://www.townofossining.com/cms/publications/all-documents/zoning-board>

BY ORDER OF THE ZONING BOARD OF APPEALS

Sal Carrera, Chairman

DATED: August 7, 2020

Sal Carrera: Mr. & Mrs. Weiss please introduce the yourself and or your representative can give us a little background of what you're looking to do.

Matthew Weiss: We're joined tonight by John Carroll. He's our architect and as the application states, we would like to put in a deck that would come up out from the dining room.

Matthew Weiss: We are in a raised ranch and that's located on the top floor and the one neighbor that whose property joins ours with it nearby with a deck wasn't available to join us tonight, but I did reach out to them. So I would ask that if you have any technical questions that I might yield to Mr. Carroll, but at this point I don't know if you need any additional information.

Sal Carrera: How long have you lived in the house?

Matthew Weiss: Since 1982 November of 82, 38 years.

Dave Whitlinger: Wow. Yeah.

Sal Carrera: Members of the zoning board. Did everyone take a look at the site?

David O'Neil: Yes.

Sal Carrera: Yes. Any questions to the applicant.

David Krieger: What were any trees going to be removed in the building of the proposed deck?

Matthew Weiss: No, no trees will be removed.

David Krieger: Okay, thank you.

Sal Carrera: Reaching out to your neighbor were there any negative comments from your neighbor?

Matthew Weiss: No, I couldn't reach a neighbor all the years we know them. That's the only time they weren't home for an entire week.

Matthew Weiss: And I couldn't directly reach them.

Sal Carrera: Okay, Sandy, do we have any letters or comments from neighbors?

Sandy Anelli: No, we did not get any comments or emails.

Sal Carrera: Okay, thank you. Okay, members of the board. Any questions.

James Blair: This Jim Blair. One of the considerations are criteria for an area variance is whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance, in this case the deck, which is being proposed as being inserted in the rear yard and something on the order of the 50% variance of The required minimum distance. On the other hand, there is a large open space from the end of the house, which would easily accommodate the proposed deck.

James Blair: I'm wondering what has precluded the applicant from putting the deck at the end of the house where it would not require a variance

Matthew Weiss: Well, we certainly gave that consideration. One concern we considered is in that location we will be putting the deck right along Minkel Road and we, it's not a question of privacy, but it is a question of convenience to having a deck where we might have to add trees or fences to block off the view from the street and in the back of the house. We have the opportunity to put in a doorway that would connect the deck in to our interior our dining room in our kitchen. So those two factors were the primary ones that drove us to seek this variance and put it in a location in the back. The only access to, you know, where we could put a door was off the dining room on basically at the back of the house.

Sal Carrera: That is why I mean during my tour of the site. I found, and I understand what the criteria very area variances, but the proposed structure as is situated and that is the most logical part. That's why we have a zoning board of appeals to look at conditions like this and my personal opinion is that where the deck is anticipated to be built, if approved this evening is the most beneficial for the residents and for the house looking out at it.

James Blair: I could just ask the applicants. Again, what is it that precludes the location of the deck at the end of the house, or if there is, for instance, a narrow six to eight foot connection that would be set up at the back of the house that would then access the, the full deck at the end.

James Blair: I guess I'm wondering what it is, whether it's What it does to the inside of the interior plan or some reason why this would be would be difficult or inappropriate so that you will give it an inside tour, because I was not.

Sal Carrera: I did not ask for an inside tour I gave a visual inspection and the most logical place is where the Architect put it as far as I am concerned.

James Blair: As far as you're concerned.

James Blair: Why would it be, and I don't need to target you Sal because you're obviously entitled to your opinion but I'm not sure I understand from it Applicants, why it's the most logical place to put it.

Matthew Weiss: Well, if I could address that? If you consider the flow of the house and you have a deck in the backyard. That is in a space that's not conducive for a lot of other uses, then it makes sense to have a deck in the backyard off of a dining room. If you have a deck, regardless of whether there's a narrow walkway to it from the back of the house and a deck that's located in this side yard. You really impacting the value of that side yard and its usage today and down the road when we first moved in. We had an above ground pool when the kids were young and over the years we stopped using it. We took that down. If we had that deck there it would impact the ability to put in a swing set or an umbrella or below ground pool down the road and that's a concern to us because, well, frankly, we won't be here forever. We won't be the only owners of the we're looking down the road for what's the most useful and effective addition to this House in the sense of adding a deck and what would make sense for other families who might be interested in moving into this house.

Dave Whitlinger: I'm looking at the way I'm looking at the Google satellite photo as well. It looks like there's a tree on that corner. Is that true

Matthew Weiss: Well, yes, there are trees along Redway and Minkel Road.

Dave Whitlinger: No, no, on the corner of the house.

Matthew Weiss: Oh, there is a cutout. Oh, yes.

Sal Carrera: Any other comments from the Board members.

Tom Wills: Well, just for the record, I think it would be helpful if it's not here on the plan, but the neighbor's house is considerably a distance from the property line, you know, more or less what it is it's, there's just quite a bit of space between your house and your neighbor.

Matthew Weiss: I haven't mentioned it, but it's equivalent to the distance my house now sits from the property line which is approximately.

Dave Whitlinger: Oh yeah, I think 60 question.

Tom Wills: Yeah, I think it's upwards to 60 yeah. I was there today and looked at it, it's, I just want to make a note of that, that if the house is not even anywhere near the minimum 34 feet. It's probably another 60 feet.

Dave Whitlinger: There are substantial trees in between the two plots.

Tom Wills: Yes, there's, it's a nice row of trees.

Sal Carrera: Any other questions or comments from the Board.

David O'Neil: No, I don't have any questions.

Sal Carrera: All right. Any anybody else from the board.

David Krieger: No, nothing either

Sal Carrera: Anybody from the public have any input or comments with regards to this application?

John Caro: May I make a comment? This is John Caro.

John Caro: Okay, Originally this this house was built on a corner lot. So this gives them two front yards and basically two side yards, if you will and I know that the front of the house faces Minkel Road and the back of the house faces the rear, what would be considered the three yard line, but had the property then had the house been turned the opposite direction, it would have probably would have more seemed more natural to have the deck at the side of the house or the rear of the house. The house was turned this also allows them to have access to under the deck where they would lose any sort of space that they might gain onto the deck for sitting as well. If they put it on the sideline, since it's elevated, there would be no access under the deck at all. They do, you know, they are fighting that sort of two front yards issue here.

Sal Carrera: Fully understand. Thank you for your input other board members ready to vote on this application.

Christie Addona: Sal, Sorry, so I just want to make that if there's anyone from the public that wants to make a comment you can use the "raise your hand feature" and if you're calling in you can press star nine.

Sal Carrera: Anything Sandy?

Sandy Anelli: I don't see anybody raising their hand.

Sal Carrera: Right, so I like I have a motion to will close the public hearing on this.

Dave Whitlinger: I'll make a motion.

Sal Carrera: Okay. All in favor of granting this application approval with the requested area variance?

Christie Addona: So you just want to briefly go through that criteria.

Dave Whitlinger: Sure, we know we need to have the vote to close the hearing.

Sal Carrera: We had, we had a vote and a second to close the public hearing

Christie Addona: Everyone voted in favor, I believe, right.

David Krieger: Yes.

Dave Whitlinger: Yes, yes.

Sal Carrera: Yes.

Sal Carrera: The criteria for an area variance:

Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance;

Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance;

Whether the requested area variance is substantial;

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

Whether the alleged difficulty was self-created - this factor is relevant to the decision, but the fact that the difficulty was self-created does not preclude granting the area variance.

Sal Carrera: Those in favor of granting this area variants for this applicant. All in favor?

David O'Neil: Aye.

James Blair: I would vote in favor, but would know that the criteria that you that you have sent out in my view the applicant fails on two fronts, first of all, that it is in my view, feasible for the applicant to relocate the deck, so that a variance is not required. And second, that the variance, as requested is substantial being over 50%. That being said, the other the other factors. I believe are not overwhelming and therefore I would go in favor of it.

Sal Carrera: Jim, my recommendation, then is to vote against it because as it stands right now, the majority of the board members are in favor as the applicant has submitted it.

James Blair: So I voted in favor of it.

Sal Carrera: Okay, thank you. Let the record show that is unanimous that the applicant has received this area variance and we wish him the best of luck. Thank you.