

STATE OF NEW YORK
TOWN OF FORESTBURGH

COUNTY OF SULLIVAN
ZONING BOARD OF APPEALS

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In the Matter of the Application of:

TRIPS 2 WIN, LLC,

RECEIVED

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**TOWN OF FORESTBURGH
TOWN CLERK'S OFFICE**

Applicant-Petitioner.

For Area Variances under Town Code Article VIII

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DECISION ON APPLICATION

Dated: February 10, 2025

Filed with Town Clerk:

I. Introduction

Petitioner-Applicant Trips 2 Win, LLC (“Petitioner”) seeks certain area variances (“Application”) for a proposed clubhouse use related to its pending application for site plan approval and a special use permit before the Town of Forestburgh Planning Board. In support of the Application, the ZBA has duly considered the totality of the record set forth in Schedule A.

II. Background

Petitioner’s property is a 3.3-acre parcel identified as S/B/L 33.-1-20 and located at 143 Forestburgh Road (“Property”). The Property is located in a Town of Forestburgh Residential-Recreation (“RR”) zoning district.

On September 14, 2018, Petitioner purchased the Property, which had an old barn on the premises. In November 2020 & April 2022, Petitioner received building permits for repairs and to construct a patio deck for storage. On October 6, 2023, the Town building Inspector cited Petitioner for various code violations including using the storage barn as a place for public assembly in violation of Town Code.

On December 28, 2023, Petitioner submitted a request to the ZBA for a use variance. In January 2024, Petitioner requested that the use variance application be postponed since they would instead apply to the Planning Board for a special use permit (“SUP”) to operate as a “clubhouse,” which they subsequently submitted on February 12, 2024.

Petitioner appeared before the Planning Board on multiple occasions between March 26 and May 2024 and also submitted a revised application for the SUP dated April 5, 2024. At the May 28, 2024 Planning Board meeting, the Planning Board questioned whether Petitioner’s proposed use constituted a “clubhouse” as used in the Town Code. The Planning Board provided Petitioner with three options: (1) submit additional information regarding its proposed use; (2) seek a use variance from this Board; or (3) request an interpretation from this Board of the meaning of a “clubhouse”.

Petitioner submitted an application to this Board for an interpretation along with a request for certain area variances on June 27, 2024. In furtherance of Petitioner’s application, this Board held a public meeting on July 25, 2024, a public hearing on August 22, 2024, and a special meeting on August 27, 2024 at which the ZBA issued a ruling in Petitioner’s favor on its application for an interpretation. Petitioner’s application for area variances, however, were held in abeyance pending further review of Petitioner’s SUP application and site plan by the Planning Board.

On January 28, 2025, the Planning Board, serving as the lead agency under the State Environmental Quality Review Act (“SEQRA”), completed its environmental review and issued a negative declaration. This Board referred the application to the Sullivan County Planning Commission under GML § 239-m, and received an advisory recommendation that the application is subject to local determination. This Board also held a public hearing on February 10, 2025.

III. Area Variance Requests

The Property is regulated under the 2023 Town Zoning Code and is subject to the uses and restrictions of the RR Zoning District. The applicable bulk standards for a clubhouse use in the RR zoning district are set forth in Town Code Chapter 180 Attachment 1 (Table of Use and Bulk Standards).

Petitioner requests the following area variances: (a) a reduction in parcel area from 5 acres to 3.3 acres; (b) a side yard setback for an existing barn from 100 feet to 7 feet; (c) a front yard setback for an existing barn from 75 feet to 65 feet; (d) a front yard setback for a bathhouse from 75 feet to 60 feet; and (e) a variance allowing the bathhouse to be closer than the primary structure to the road frontage.

Town Code Chapter 180 Attachment 1 is subject to Town Code § 180-12(B), which provides an automatic fifty percent reduction in the bulk requirements for lawfully existing non-conforming lots provided that the certain enumerated requirements are met. Based on Petitioner's February 4, 2025 submission, discussions during the February 10, 2025 public hearing, and concurrence by the ZBA counsel, this Board agrees that the automatic fifty percent reduction to the bulk standards for a lawfully existing non-conforming lot applies.

As such, Petitioner's area variance requests are modified, as a matter of law, as follows: (a) the bulk standard for lot size is reduced from 5 acres to 2.5 acres, and no variance is required as Petitioner's lot is 3.3 acres; (b) the bulk standard for side yard setback for the existing barn is reduced from 100 feet to 50 feet, and a variance for 43 feet is required; (c) the bulk standard for front yard setback for the existing barn is reduced from 75 feet to 37.5 feet, and no variance is required as the barn is situated 65 feet from the front yard parcel boundary; (d) the bulk standard for front yard setback for the bathhouse is reduced from 75 feet to 37.5 feet, and no variance is required as the bathhouse is situated 60 feet from the front yard parcel boundary; and (e) Town Code § 180-12(B) does not apply to the requirement that the primary structure be closer to the road frontage than accessory structures, and a variance is required.

IV. SEQRA

The Town Planning Board, serving as the SEQRA lead agency, classified Petitioner's proposed project as an "Unlisted Action" as defined under 6 NYCRR Part 617.6 of the SEQRA regulations. The SEQRA lead agency conducted a coordinated review under NYCRR Part 617.6(b)(4) and had identified the ZBA as an involved agency. The Planning Board held a public hearing at their January 28, 2025 meeting, and considered the potential for any short term, long term or cumulative impacts. The Planning Board considered specific impacts that could arise from the granting of the requested area variances, including impacts on community character or quality, traffic, wetlands, flood zones, and on historic or aesthetic resources. The Planning Board determined that the proposed action will not result in any significant adverse environmental impacts and issued a SEQRA negative declaration.

Under applicable law, not only may the ZBA rely on the lead agency's negative declaration, but, because the lead agency undertook a coordinated review identifying the ZBA as an involved party, the ZBA is bound to the negative declaration under 6 NYCRR 617.6(b)(3)(iii) ["The determination of significance issued by the lead agency following coordinated review is binding on all other involved agencies"]. As such, this Board is not required to undertake an independent SEQRA review, because the lead agency has already considered relevant area variance impacts, and applicable SEQRA regulations binds all involved agencies to the negative declaration.

V. Area Variance Standards and Analysis

Pursuant to the criteria set forth under New York State Town Law § 267-b(3), the ZBA must consider five statutory factors when determining whether to grant an area variance. The ZBA has reviewed the applicant's request for (1) a variance to reduce the required side yard setback for the existing barn from 50 feet to 7 feet and (2) a variance to allow an accessory structure (bathhouse) to be located closer to the road than the primary structure. The Board finds that the application meets the necessary standards for approval, as set forth below.

- 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 the variance.**

The existing barn has been in its current location for over 100 years, and its continued use as a clubhouse will not create any additional adverse impacts on the neighboring property. The neighbor most affected by the setback variance has acknowledged the barn's long-standing presence and has not objected to the request. Similarly, the bathhouse, located slightly closer to the road than the primary barn structure, is partially obscured by trees and vegetation, minimizing any visual impact. The ZBA finds that granting the requested variances will not result in an undesirable change to the character of the neighborhood or negatively impact nearby properties.

- 2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.**

The existing barn's location is fixed, and relocating the structure to comply with the required 100-foot setback would not be feasible. The only alternative would be to purchase additional land from the neighboring property, which is not feasible for Petitioner. Similarly, moving the bathhouse to comply with the frontage requirement would require significant alterations to the site's existing infrastructure, including plumbing and deck structures, making it an impractical solution. Therefore, no reasonable alternatives exist to achieve the applicant's objectives without the requested variances.

- 3. Whether the requested variance is substantial.**

The reduction of the side yard setback from 50 feet to 7 feet is numerically significant; however, the long-standing presence of the barn at this location mitigates its substantiality in practical terms. Given that the structure has been in place for over a century without causing adverse effects, the ZBA does not find this variance to be substantial in impact. As for the bathhouse, the 5-foot differential between its location and that of the primary barn structure is minimal and does not constitute a significant departure from the zoning requirement.

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

The ZBA finds no adverse environmental or physical impacts resulting from the proposed variances. The Planning Board issued a SEQRA negative declaration, confirming that the project will not create significant environmental effects. The barn's continued use and the bathhouse's placement will not increase traffic, stormwater runoff, or any other environmental burden. Furthermore, the relocation of the grass parking lot outside of the 100-year flood zone has mitigated any potential flood-related concerns.

5. **Whether the alleged difficulty was self-created.**

The location of the barn has remained unchanged for over 100 years, meaning that the difficulty in meeting the current setback requirements was not self-created by the applicant. While the bathhouse's placement is a self-created condition, the minimal 5-foot discrepancy does not outweigh the other factors favoring approval.

VI. Determination

After balancing the benefit to the applicant against any potential detriment to the health, safety, and welfare of the neighborhood, the ZBA finds that the requested variances meet the statutory criteria for approval. The variances will not result in an undesirable change to the neighborhood, no feasible alternatives exist, the environmental impact is negligible, and the longstanding nature of the barn mitigates concerns regarding the substantiality of the variance. Therefore, the ZBA hereby grants the requested area variances for the side yard setback and the accessory structure location as described in the application, subject to the conditions set forth in Schedule B.

This shall constitute the final determination of the Board.

On a motion by Zoning Board of Appeals Member Edward Pajak, seconded by Member Dave Griffin, the Application was approved on a roll call vote, the results which follow:

<i>Chairman Carl Amaditz</i>	<i>Aye – Nay – Abstain</i>
<i>Dave Griffin, ZBA Member</i>	<i>Aye – Nay – Abstain</i>
<i>Hilda Lehr, ZBA Member</i>	<i>Aye – Nay – Abstain</i>
<i>James Steinberg, ZBA Member</i>	<i>Aye – Nay – Abstain</i>
<i>Edward Pajak, ZBA Member</i>	<i>Aye – Nay – Abstain</i>

Adopted on the 10th day of February 2025.

By Order of the Forestburgh Zoning Board Appeals


Carl Amaditz, Chairman

In the Matter of Application of Trips 2 Win LLC for Area Variances
Schedule A – Administrative Record

- 1) 2023.11.01 Town Code Ch.180 Zoning Table of Use and Bulk Requirements
- 2) 2023.12.28 Application for Use Variance with Supplement
- 3) 2023.12.28 Site Plan
- 4) 2024.04.03 Revision #2 to original Site Plan
- 5) 2024.06.27 Cover Letter to Application
- 6) 2024.06.27 Legal description of parcel, bargain & sale deeds, written consents
- 7) 2024.06.27 Application for Interpretation and Variances
- 8) 2024.06.27 Short EAF
- 9) 2024.06.27 Ltr to ZBA re Area Variance Review Criteria
- 10) 2024.06.24 Ltr to ZBA re summary of actions
- 11) 2024.07.25 ZBA Meeting Minutes
- 12) 2024.08.22 ZBA Meeting Minutes
- 13) 2024.08.27 ZBA Meeting Minutes
- 14) 2024.08.27 ZBA Ruling on Petition for Interpretation
- 15) 2024.10.23 Planning Board Notice to ZBA of Lead Agency and Short EAF
- 16) 2024.12.06 Short EAF Part 1
- 17) 2024.12.06 Revision #4 to original site plan
- 18) 2024.12.06 Application
- 19) 2025.01.07 ZBA Meeting Minutes
- 20) 2025.01.27 GML239 County Review
- 21) 2025.02.04 Ltr to ZBA re Town Code 180-12
- 22) 2025.02.05 Ltr to ZBA re Neg. Dec. for SEQR
- 23) 2025.02.10 ZBA Public Hearing and Meeting Minutes

Area Variance Conditions of Approval

1. **Town Costs.** Payment of all fees in accordance with the Town's fee schedule and payment of any outstanding consultant fees.
2. **Approved Site Plan and Special Use Permit.** The variance to reduce the required side yard setback for the existing barn from 50 feet to 7 feet and variance to allow an accessory structure (bathhouse) to be located closer to the road than the primary structure is conditioned on Applicant obtaining site plan approval and a special use permit from the Planning Board. The variances shall be deemed revoked and void if the Planning Board does not grant site plan approval and a special use permit for Applicant's proposed clubhouse use.
3. **Enforcement.** Non-compliance with any of the conditions set forth herein shall constitute a violation enforceable by the Town Building Inspector / Code Enforcement Officer, including suspension or revocation of the area variances granted herein.