

**TOWN OF SAND LAKE
ZONING BOARD OF APPEALS
THURSDAY, April 13, 2023 - 7:00 PM
SAND LAKE TOWN HALL**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ATTENDANCE

Area Variance Application and Public Hearing (con't)

Edward Francis (Applicant/Property Owner)
78 Sheer Road
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 158.-2-50
Lot Size: 9,542 +/- acres

An Area Variance application for insufficient side yard setbacks for construction of a single-family dwelling.

Area Variance Application for Maria Martin and Public Hearing

Michael and Maria Martin (Applicant/Property Owners)
32 Glen Royal Drive
Averill Park, NY 12018
R - Residential Zoning District

Tax Map #: 169.2-2-14
Original Lot Size: 5.29 acres
Proposed Lot Size: .26 acres

An Area Variance application for insufficient lot size and insufficient lot width associated with a proposed boundary line adjustment.

DRAFT RESOLUTIONS FOR APPROVAL

Area Variance for Kyle Zeh

Application approved at the March 9, 2023 ZBA meeting.

Area Variance for Andrew Bulmer

Application denied at the March 9, 2023 ZBA meeting.

DRAFT MINUTES FOR APPROVAL

February 9, 2023

ADJOURNMENT

**RESOLUTION OF ZONING BOARD OF APPEALS
APPROVING THE AREA VARIANCE for KYLE ZEH**

APPLICANT/PROPERTY OWNER NAME AND ADDRESS: Kyle Zeh, 92 Wisner Road, Averill Park, NY 12018

PROJECT NAME: Area Variance to exceed the maximum front yard setback for the construction of a multifamily dwelling.

PROJECT LOCATION: 23 Old Route 66, Averill Park, NY 12018

TAX MAP NO: 148.-3-1-10 ZONING DISTRICT: Hamlet Mixed Use LOT SIZE: .32 acres

APPLICATION PREPARED BY: Kyle Zeh

APPLICATION DATED: January 4, 2023

WHEREAS, on March 9, 2023 a MOTION was made by Melissa Toni, SECONDED by Amy Lent and unanimously approved identifying this Board as Lead Agency and classifying the proposed action as a Type II Action under the State Environmental Quality Review Act (SEQRA).

WHEREAS, a public hearing was held on the application at the March 9, 2023 meeting of this Board;

WHEREAS, on March 9, 2023 a MOTION was made by Melissa Toni, SECONDED by Scott Blair and approved by all to grant approval of an Area Variance for the build of a multifamily dwelling to exceed the maximum front yard setback of 113' with the following conditions: 1) constructed per drawing plans dated 2/22/23; and, 2) a 6' fence will be installed on top of the retaining wall at the back of the property as shown on the drawing.

NOW, THEREFORE, BE IT RESOLVED, that the Town of Sand Lake Zoning Board of Appeals, after due consideration of said Area Variance Application, and the requirements of the Code of the Town of Sand Lake (Chapter 250, Zoning, Section 250-20.A and 250-144.A) and NYS Town Law 267-b, does hereby grant APPROVAL of the Area Variance Application hereinabove stated and identified as submitted, noting the benefit to the Applicant if the variances are granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Notably:

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.*

It is the determination of the Board members that no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. The decision was based upon the configuration of the lot along with concerns of adjacent neighbor being resolved by design changes.

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.*

It is the determination of the Board members that there was not another method to achieve the desired outcome based on the current configuration of the lot.

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

It is the determination of the Board members that the requested area variance being sought was substantial for front yard setback as a maximum of 10' is allowed and the applicant is seeking a 113' front yard setback. As mentioned above, the configuration of the lot was taken into consideration.

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

It is the determination of the Board members that the proposed variance would not have an adverse effect or impact on the physical or environmental condition in the neighborhood or district. It was stated by the applicant that catch basins would be installed to direct water runoff back towards the street; thus, be an improvement for the existing situation of standing water runoff.

5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.*

As with many Area Variance requests before this Board, the difficulty was self-created as the applicant was aware of the lot layout at the time of ownership.

PLEASE NOTE, the Zoning Board of Appeals has no authority to alter or determine the ownership of property and that the decision of the Board herein is not a determination of the underlying ownership of the subject property/ies. Moreover, the approval of this area variance does not obviate the need for any other Board approvals or permits that may be necessary.

DATED:

Melissa Toni, Chairwoman of Sand Lake Zoning Board of Appeals

**RESOLUTION OF ZONING BOARD OF APPEALS
DENYING AN AREA VARIANCE for ANDREW BULMER**

PROPERTY OWNER/APPLICANT(S) NAME AND ADDRESS: Andrew Bulmer, 24 Stone Camp Way, Averill Park, NY 12018

PROJECT NAME: Area Variance for insufficient lot size and insufficient lot width associated with a proposed Minor Subdivision.

PROJECT LOCATION: 24 Stone Camp Way, Averill Park, NY 12018

TAX MAP NO: 170.2-1-4

ZONING DISTRICT: Residential LOT SIZE: 1.84 acres

APPLICATION PREPARED BY: Andrew Bulmer

APPLICATION DATED: January 29, 2021 and January 18, 2023

WHEREAS, an area variance application seeking relief from the required lot size and required lot width was submitted by Andrew Bulmer (the “Applicant”);

WHEREAS, as such two area variances are sought. As requested, the lot size of the parent lot would go to being in conformity to .84 acres with 1.0 acres being required per Chapter 250 of the Town Code. Additionally, Applicant also seeks a lot width of 92.19 feet while the Code per Chapter 250 requires 150 feet;

WHEREAS, the Board notes its significant familiarity with the subject property and nearby properties as there have now been multiple applications before this Board involving both the subject property and neighborhood in recent years. Notably, in the approximately three years that Applicants have owned their property they have submitted several, serial variance requests. An objecting neighbor’s attorney notes that “If granted, the current variances would be the 5th and 6th variances granted to this particular applicant for this property, despite his short period of ownership of the property.” (Tingley Letter of March 9, 2023 at p. 2);

WHEREAS, motions were made and unanimously approved to deem the application complete based on a survey performed by Capital District Land Surveying dated January 10, 2023 entitled Proposed Subdivision; and, to seek a recommendation from the Town of Sand Lake Planning Board; and set a public hearing for March 9, 2023;

WHEREAS, the Sand Lake Planning Board provided a recommendation to the Zoning Board of Appeals on March 2, 2023;

WHEREAS, on March 9, 2023 a MOTION was made by Melissa Toni, SECONDED by Amy Lent and unanimously approved identifying this Board as Lead Agency and classifying the proposed action as a Type 2 Action under the State Environmental Quality Review Act (SEQRA);

WHEREAS, a public hearing was held on the application at the March 9, 2023 meeting of this Board; and

WHEREAS, on March 9, 2023 a MOTION was made by Melissa Toni, SECONDED by Nancy Perry and unanimously approved, to deny both Area Variances as requested, which once again were for a lot size of .84 acres and a lot width of 92.19 feet;

NOW, THEREFORE, BE IT RESOLVED, that the Town of Sand Lake Zoning Board of Appeals, after due consideration of said Area Variance Application, and the requirements of the Code of the Town of Sand Lake (Chapter 250, Zoning, Section 250-61 and 250-144.A) and NYS Town Law 267-b, does hereby DENY the Area Variances hereinabove stated and identified as submitted, noting the

1. *The benefit to the Applicant if the variances are granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community does not justify the grant of the area variance.*

The benefit to the Applicant is essentially getting to build a second house on the 1.84 acres, essentially two homes instead of one. In the eyes of the board, this is outweighed by the detriment to the health, safety and welfare of the neighborhood or community. The great majority of the existing homes by the subject property are developed along the lake shore. If allowed, this would result in the existing patten of development and at variance with the lot configuration utilized by a majority of the lots in the subject neighborhood.

2. *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 variances.*

It is the determination of this Board that a significant undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of the area variance. It was noted that numerous public comments were received, including from the abutting neighbors, that the requested subdivision and existing lot being rendered substandard would not be in character with the neighboring properties. The rendering of the existing lot as substandard in order to allow the newly created lot to be a building lot would result in an increased density and a reduction of green area. As noted above, Applicants want to place a house where the majority of houses in that neighborhood are not placed, or at least have not been placed since the enactment of zoning in the town.

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.*

It is the determination of this Board that there is another method to achieve the desired outcome—Applicants could purchase a separate conforming lot. It is noted that Applicant purchased the subject lot soon after the enactment of the 2017 zoning amendments. It appears to the Board that the subject lot was purchased with the hope that this variance was to be granted. Moreover, Applicants already have a home on the subject lot. The lot to be created is to be for their daughter. Therefore, the benefit could be achieved by some other method.

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

Even putting aside the fact that this is the fifth and sixth variance sought for the property, it is the determination of this Board that the requested area variances being sought are substantial in their own right. Once again, the first variance seeks .84 acres with 1.0 acres being required and the second seeks the allowance of lot width of 92.19' whereas 150 feet is required. Both individually as well as together, the amount of variances sought are both substantial, both being over 15%.

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

The change in the lot configurations in the area would have such an impact. Moreover, there has been no demonstration that the allowance of a second building lot and the increased density and impervious surfaces that will result will not affect the lake.

5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variances.*

As with most matters that come before this Board, the difficulty is self-created and this is no exception. The Applicant knew of the zoning requirements at the time of his purchase or should have known about them as he was a member of the Town Board at the time. Moreover, it is noted that the status quo is zoning compliant. The only reason Applicant needs the variance is because he wants something that was and is not allowed by zoning.

PLEASE NOTE, the Zoning Board of Appeals has no authority to alter or determine the ownership of property and that the decision of the Board herein is not a determination of the underlying ownership of the subject property/ies. Moreover, the approval of these area variances does not obviate the need for any other Board approvals or permits that may be necessary.

DATED: April ____, 2023

Melissa Toni, Chairwoman of Sand Lake Zoning Board of Appeals

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
February 9, 2023**

The minutes, as follows, are intended to provide a general summary of the Agenda items and Public Hearings. Quotes presented are not verbatim, nor is all discussion which occurred presented herein. This document should not be relied upon as a transcript or the actual proceedings. The transcript of this meeting is on a digital voice recorder and available at the Town Hall.

CALL TO ORDER: Melissa Toni opened the meeting at 7:00PM

MEMBERS PRESENT: Amy Lent
Scott A. Blair
Daniel Hogle
Craig Crist, Esq.

MEMBERS ABSENT: Nancy Perry

OTHERS PRESENT: William Macey, Marianne Macey, Megan Macey, Josh Macey, Kyle Zeh, Joe Venditti, Erika Venditti, Dan Collopy, William Glasser, Daniel Rounds, Claude Rounds, Michael Wager

RECORDING CLERK: Laura Fedoreshenko, Clerk for Planning Board and ZBA

Melissa Toni (MT) explained the area variance process for all present.

Area Variance Application & Public Hearing

William Macey (Applicant/Property Owner)
296 Taborton Road
Sand Lake, NY 12153
RR – Rural Residential Zoning District

Tax Map #: 148.-3-19

Lot Size: 1.77 acres

An Area Variance Application for insufficient front yard setback for the future build of a single-family home.

William Macey and the Town's Code Compliance Office/Building Inspector Michael Wager were present. Mr. Macey and Mr. Wager summarized the project which was initially presented at the January 12, 2023 Zoning Board Appeals (ZBA) meeting. MT stated that trying to place a new dwelling further back on the lot was constrained by the stream. Daniel Hogle (DH) clarified that the stream was set down in thus, no flood issues to which Mr. Wager agreed.

With no further questions, MT motioned to open the Public Hearing at 7:07pm; seconded by DH and all approved. With no written or in-person public comments, MT motioned to close the Public Hearing at 7:08pm; seconded by Amy Lent (AL) and all approved. MT stated that with no public comments received, it is more than likely that nearby residents were already used to the structure that had existed previously.

MT motioned to declare the Town of Sand Lake ZBA as Lead Agency; seconded by Scott Blair (SB) and all approved. MT motioned to classify the project as a Type 2 action under SEQ; seconded by AL and all approved. For the reasons discussed at this meeting and the initial presentation, MT motioned to approve

the Area Variance Application for a 52' front yard setback versus the Zoning Code's requirement of 75'. This motion was seconded by AL and all approved.

Area Variance Application and Public Hearing

Kyle Zeh (Applicant/Property Owner)
23 Old Route 66
Averill Park, NY 12018
HMU – Hamlet Mixed Use Zoning District

Tax Map #: 148.-3-1- 10

Lot Size: .32 acres

An Area Variance Application to exceed the maximum front yard setback for the build of a multifamily dwelling.

Kyle Zeh and the Town's Code Compliance Office/Building Inspector Michael Wager were present. Mr. Zeh and Mr. Wager summarized the project which was initially presented at the January 12, 2023 Zoning Board Appeals (ZBA) meeting.

MT asked Mr. Zeh if the 113' front yard setback was still being sought. Mr. Zeh responded yes.

It was noted by SB that when the fire did happen, a fire truck could not be fit in between this building and the one next to it which caused the loss of the previous dwelling and damaged the home next door. MT asked what existed on the property previously. Mr. Zeh stated that there were two barns in the back and the apartment building in the front. He added that the barns had been removed. Mr. Wager indicated that if the applicant were to rebuild everything back onto the site, it would be way over the maximum coverage for impervious surface; thus, only the new apartment building would be built and no ancillary buildings. Mr. Zeh added that a garage would not be built. It was noted that a new well would be done and hookup to the Town sewer was required.

MT motioned to open the Public Hearing at 7:16pm seconded by AL and all approved. Daniel Round stated he resided at 3054 NY 43 which is the property behind the parcel being discussed. Mr. Rounds stated that at this point he was not willing to support the variance until he had more information than was available on the website from the last agenda. He added that there was no site plan showing the locations of any of the proposed features such as the driveway or parking lot or what they would look like. He stated that there was no plan to show the drainage and it was a wet area to start with and did not up until almost May. He added that he would like to see the plan for drainage and where it would run. He explained that his residence was downhill from the property under discussion. He indicated that he would like to see the location and type of lighting proposed for the rear of the building as he was concerned about light pollution on his property. He questioned why an Area Variance was not required regarding lot size as a 1-acre lot was required in that Zoning District. He added that should the request be approved; he would like to see the conditions imposed concerning fencing and light glare as related to his property. MT asked Mr. Zeh to address the concerns of Mr. Rounds, if feasible. Mr. Zeh stated that the retaining wall would be right on the property line and a fence could be installed on top it. MT asked if that area was vegetative currently to which Mr. Zeh responded that it was just sloped. Mr. Wager stated the property did drop off in the back and asked how the drainage would be addressed. Mr. Zeh stated that a catch basin would need to be located at the front so runoff would be directed back out to the street. MT stated that the project should not impact other residents' property. Mr. Rounds stated that the previous barn was much further up on the property than 36'. Mr. Wager explained that the parcel was a pre-existing non-conforming lot of record and upon the building being removed the applicant decided, due to the layout of the lot, to replace the building further back on the lot instead of in the same footprint. MT stated she understood that Mr. Rounds did not wish to look at a large wall with lights shining into the backyard of his property. Mr. Zeh stated that a privacy fence could be added to the top of the retaining wall. Mr.

Wager stated that a stockade fence could go as high as 6'. Mr. Rounds asked where the snow would be plowed to. Mr. Zeh responded that the snow would be removed. Mr. Rounds stated that he did not feel that 36' was not a lot for separation and continued to feel that he did not have enough information. MT explained that the request before the ZBA was strictly for the request to have a front yard setback of 113' versus the 10' required by the Zoning Code. MT asked if a Recommendation from the Planning Board (PB) could be requested. Craig Crist (CC) responded that an advisory Recommendation from the PB could be requested as it may help to alleviate some of the concerns. He also recommended that if such a Recommendation was requested of the PB, the ZBA Public Hearing should remain open until the next ZBA meeting. Mr. Rounds reiterated that his major concerns were the drainage and any negative light impacting his property as he has lived there for 20+ years. Mr. Zeh stated that the reason for the retaining wall was to get the elevation up for parking to be located there. Mr. Rounds stated he understood but the elevation with asphalt would be above his land. MT stated that if the applicant were to move further forward from Mr. Rounds would mean that he would be only 20' away from the front neighbor and she did not see it feasible to shift towards the property line on the other side as there was a kids play area. Mr. Zeh stated that a survey was being done for the property lines and it would reflect how it would not affect anything on Mr. Rounds property. Mr. Wager explained that the elevation of the building with the gravity for the sewer line had to be a certain level. Options for catching and redirecting rainwater runoff were discussed. Mr. Zeh stated that lighting would not go above the fence and be pointed downward. Mr. Rounds continued to want to see the details discussed on a site plan. DH stated that the work proposed by Mr. Zeh may alleviate and/or help to dry out the wet areas sooner.

MT stated that the options were to condition the application or send it to the PB for a Recommendation. CC read the provisions from the Zoning Code Section 250-146 as it related to the ZBA seeking a Recommendation from the PB. MT stated that in the past the ZBA had sent very similar requests to the PB; thus, should not deviate from that process. MT motioned to seek a Recommendation from the PB at their March 1, 2023 meeting; seconded by SB and all approved. MT made a motion to continue the Public Hearing until the March 9, 2023 ZBA meeting; seconded by AL and all approved.

Area Variance Application

Andrew Bulmer (Applicant/Property Owner)
24 Stone Camp Way
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 170.2-1-4
Original Lot Size: 1.84 acres
New Lot: 1.0 Acres
Parent Lot: 0.84 acres

An area variance application for insufficient lot size and insufficient lot width associated with a proposed minor subdivision to create one new lot.

Michael Wager and Andrew Bulmer were present. Mr. Bulmer stated that they wished to subdivide their 1.84-acre parcel into a .84-acre lot and a 1-acre lot. Mr. Bulmer explained that the 1 acre lot would be for his daughter and referred to the survey done by surveyor Daniel Peeters. Michael Wager stated that the proposed .84-acre lot would consist of the Bulmer's existing home along with an area directly across Stone Camp Way. He explained that Lot 1 would meet the zoning code however Lot 2 would be shy of the 1-acre zoning requirement and as such would be a non-conforming lot. Mr. Wager added that many of the nearby lots on the lake were non-conforming which was characteristic of the neighborhood. MT asked if the proposed 1-acre lot would be accessed via Methodist Farm Road to which Mr. Bulmer responded yes and noted that all setback lines were marked on the survey. Mr. Wager added that the proposed 1-acre lot would be required to hookup to Town sewer. Mr. Bulmer stated a detached garage was planned in the future for the area across Stone Camp Way on proposed Lot 2. Mr. Wager noted that area consisted of a Town sewer line; thus, there would need to be a 15' setback on each side of it.

CC noted that an advisory Recommendation from the PB was required by NY State law as the request was related to a proposed minor subdivision. MT referred to Section 4 (c) of the applicant's application regarding the question on the proposed variance having adverse impact on physical or environmental conditions in the neighborhood. She noted that the written response provided was not helpful in the review of the request for variances. MT stated that noting such things large impervious surfaces were not planned for either of the proposed lots and that a single-family home was planned for Lot 1 which had sufficient room for a septic and/or well would be more helpful. Mr. Bulmer stated that for the proposed .84-acre lot nothing would change, and he talked about the existing treed area. Mr. Wager added that the setbacks for the Town sewer line needed to stay clear of trees and nothing could be built there as it was an easement for the Town to utilize. Mr. Bulmer added that in that easement area there was also a couple of overhead power poles. A discussion ensued regarding whether the applicant was allowed to consider both sides of Stone Camp Way as part of road frontage for the proposed .84-acre lot. It was noted the residents along Stone Camp Way had easements to utilize it and a decision was made that only the measurements for one side of road frontage – which totaled 92.2' - would be used for the area variance request.

MT motioned to consider the application as complete, seconded by Amy Lent (AL) and all approved. MT motioned to seek a Recommendation from the PB at the March 1st meeting, seconded by DH and all approved. MT motioned to schedule the Public Hearing for March 9th at 7:30pm contingent upon the PB's Recommendation and no changes to the proposed project, seconded by AL and all approved.

Area Variance Application

Edward Francis (Applicant/Property Owner)
78 Sheer Road
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 158.-2-50
Original Lot Size: 9,542 +/- acres

An area variance application for insufficient side yard setbacks for construction of a single-family dwelling.

Surveyor William Glasser was present and stated that Edward Francis was seeking side yard setbacks for both sides prior to a house being designed. Mr. Glasser explained that the parcel was a pre-existing non-conforming lot of record which had a trailer on it years ago and added that the lot was currently flat gravel. Mr. Glasser stated that the home would be setback 55' from the road and the applicant needed 13.7' on one side and 13.4' on the other side. It was noted that the requested side yard setbacks included the roofline/fascia. Mr. Wager explained that when the house trailer existed on the lot, it had been condemned due to falling into disrepair. He added that the owner at that time had walked away from it and a new owner had taken the building down; however, that had been done over 24 months ago. Mr. Wager stated that gravel had been brought in for a septic system towards the back of the lot and a well proposed up front to provide the required distances between the two.

The parcel layout was viewed, and a discussion ensued regarding the size of the parcel and layout for the septic system and well in relation to the neighbor and requirements of the County Health Department. MT explained that the ZBA did not historically request the applicant to have approval from the County Health Dept. prior to appearing before the Board. She added that the ZBA did however work with information provided by the surveyor in regards to needed measurements. It was noted that the applicant planned to build a small two-bedroom home. Mr. Wager stated that the applicant had reached out to the neighbor to purchase some additional land but was told it was not available.

MT stated that the options were to either have the applicant prove that a septic could be fit in 100' from any well and that a well could be done 100' from any septic and come back before the Board to deem as

complete to schedule the Public Hearing; or, schedule the Public Hearing for next month with the surveyor bringing in that information. Mr. Wager commented that a rough scale could be done to show the feasibility for the septic system. CC pointed out that it is incumbent upon the applicant to ensure that any variance granted is met in addition to gaining the needed outside agency approvals such as the County Health Dept.

MT motioned not to deem the application complete, seconded by SB and all approved. It was agreed that the applicant or representative would return on March 9th with additional information on the distance measurements for septic and well.

DRAFT MINUTES FOR APPROVAL

MT motioned to accept the draft minutes for January 12, 2023 as presented; seconded by DH and approved by all.

ADJOURNMENT - MT motioned to adjourn the meeting at 8:22pm; seconded by AL and all approved.