

**Town of Sand Lake
Planning Board Minutes
November 4, 2020**

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 of the actual proceedings. The transcript of this meeting has been recorded and is available at the Town Hall.

- CALL TO ORDER:** Arthur Herman, Chairman, called the meeting to order at 7:33 PM
- MEMBERS PRESENT:** Ralph LaMontagna, Mary Ellen Trumbull, Jonathan Bernstein, Rick Giolito, William Glasser, Craig Crist, Esq.
- MEMBER ABSENT:** Michael Groff
- OTHERS PRESENT:** Malcolm McPherson, Esq., Andrew Gilchrist, Esq., Mark Millsbaugh, Ken Bailey, Monica Ryan (Town Planner)
- RECORDING CLERK:** Laura Fedoreshenko, Clerk for the Planning Board and ZBA

ZBA Recommendation – Area Variance related to a Minor Subdivision

Eric M. & Mary A. Dahl (applicant)	Tax Map # 147.1-2-10.121
Devin and Carolyn Lander (property owner)	
9 Dahl Way	Lot Size: 10.77 acres
Averill Park, NY 12018	Lot 1: 2.01 acres
R – Residential Zoning District	Lot 2: 8.76 acres
A Minor Subdivision Application to create a 2-acre lot from a 10.77-acre parcel.	

Attorney Malcolm McPherson was present and stated he represented the Dahls. Mr. McPherson summarized the project initially presented at the Planning Board (PB) October 21, 2020 meeting. He explained that the Area Variance was needed due to the 50' road frontage for Fisher Road on the larger parcel versus the required 150'; and the 2-acre lot would have not road frontage (only an easement) if the Minor Subdivision became approved. He further explained that the Zoning Board of Appeals (ZBA) had no issues with the requested Area Variance request and had set a Public Hearing for November 12, 2020. Mr. McPherson stated that at the last PB meeting, the Board members were concerned about the grading off Fisher Road on the proposed lot 2; thus, determined that a site visit was needed before a Recommendation could be rendered. He added that according to Mr. Dahl, there was a berm just pass the easement off Fisher Road which had been done to store material for future use, where needed. He also stated that he had talked to the potential builder who indicated that there would not be an issue to move the material from the berm to where needed. Arthur Herman (AH) stated that he had done a site visit and noted that as Fisher Road ended the grade went up 4-5' or more to the right and forward a driveway had been cut -in. He added that the Lot 2 itself was a large field and if the hill were to be cut-back along with removal of some trees right off Fisher Road; he felt that it would make the lot very usable and a feasible project. Ralph LaMontagne (RL) indicated that he was unable to perform a site visit due to medical conditions. William Glasser (WG) stated that he had performed a visit and added that he did not believe a future road would be feasible for any future subdivisions. AH clarified that the issue under

review was the request to create a 2-acre lot from the 10.77-acre lot. RL indicated that he had no issues with the project and considering there was a buyer, he found that it as positive sign along with the support from the neighbors. AH motioned for a positive Recommendation to the ZBA based on the configuration of the lots as submitted; seconded by Mary Ellen Trumbull (MET) and all approved. AH then motioned to schedule the PB Public Hearing for the Minor Subdivision for December 2, 2020 contingent on the ZBA approval of the Area Variance. The motion was seconded by MET and all approved.

Special Use Permit/Site Plan Review Application

Ken Bailey
204 Barnes Road
West Sand Lake, NY 12196
AR – Agriculture/Residential Zoning District

Tax Map # 157.-3-34.1

Current Lot Size: 64.66 acres

A Special Use Permit/Site Plan Review Application to establish a seasonal event venue on an agricultural/residential property.

Ken Bailey, attorney Andrew Gilchrist and engineer Mark Millspaugh were presented. Mr. Gilchrist presented and stated that the site plan had been updated with additional information as requested at the PB meeting of October 21, 2020. The site plan was reviewed and he further explained that the additional information consisted of confirmation that the area of disturbances would be under 1-acre. He then pointed out that an earthen ramp had been added and was included in the area of disturbance. He also stated that based on concerns regarding the referenced lean-to/covered patio; it has been removed from the site plan. Mr. Gilchrist then stated that the Fire Department reviewed the project which resulted in the entrance off Barnes Road being widened and reflected on the updated site plan as well as accounted for in the area of disturbance. He added that proposed lighting information had also been added to the site plan. Engineer Mark Millspaugh referenced the site plan and indicted that the shaded areas represented new ground disturbance associated with the roadways. He noted the entrance off Barnes Road reflected the widening of the driveway apron at request of the Fire Department. He then spoke of the new proposed parallel parking on either side of the driveway. Mr. Millspaugh then stated that on the right towards the area of the event barn, there was also parking on both sides. He then spoke of the barn and noted that the lines on the drawing reflected the grading. He pointed out the earthen ramps were added which would allow the barn to be accessed as a storage facility during the months when not used for events. He then spoke of the area of disturbance and explained that it had been calculated using AutoCAD 3D feature and reiterated that it would be less than one-acre. WG asked what number had been calculated for the total disturbance to which AH replied .98-acres. Mr. Millspaugh confirmed that number and included the areas along the driveway. RL had thought the Town Engineer reviewed the site plan. Ms. Ryan clarified that the site plan had not been reviewed by the Town Engineer however had been reviewed by Michael Wager of the Building Department who had also discussed it with Mr. Millspaugh. Mr. Gilchrist then stated that on the 2nd page of the site plan, Sterling Environmental had provided information on the light impacts and photometrics. Mr. Millspaugh then explained that the applicant had preferred ballard style lighting along the perimeter of the parking lot. He explained that lighting would be downcast to illuminate ground surface around the lighting structure and stated that the site plan noted the photometrics information. Mr. Gilchrist added that it was certainly the intent of the applicant to have adequate lighting for safety around the parking and into the barn without creating night glow or off-site light impact. He added that traffic impact information was included and also referred to his submittal of October 27, 2020 in which the issue had been reviewed at length from a legal issue as well as a full record review issue. Mr. Gilchrist explained that under SEQR, they had reviewed and researched the issue, which were deemed to be cumulative impacts between projects (meaning Bailey and June Farms), and an interpretation of the SEQR regulations rendered that a cumulative impact assessment on this record was not warranted under SEQER. Rick Giolito (RG) stated that he was the Board

member who had brought up the traffic issue added that and after a site visit for the study of e distances, he wished to remove any requirement for a further traffic study. Mr. Gilchrist recapped that PB had the opportunity to review the updated information at a few of the PB meetings and based on those reviews and initial comments from the Board, had deemed the site plan and the application materials complete for purposes of scheduling a Public Hearing which had been done on September 16, 2020 (at which time the PB allowed additional written public comment until September 23, 2020). He added that, on behalf of Mr. Bailey, responses to the public comments had then been submitted on October 7, 2020 which were then discussed at the subsequent PB meeting. He also stated that, as noted in the conversation above, additional information had been submitted on October 27, 2020; thus, deemed to be a complete application with responses to the Board's and public's comments as well the inclusion of proof from their licensed engineer; which he noted had been the only expert information submitted on record, including the public comments received. He stated that the requested use, through the Town of Sand Lake Zoning Code adopted in 2017, was deemed to be a use appropriate for the zoning district. He added that the Town has spent a considerable amount of time preparing that 2017 zoning law including substantial environmental review and determined that such a use was appropriate. Mr. Gilchrist then added that there had been a lot of conversation regarding the proposed project and June Farms, and they had tried to make it very clear on the record that Mr. Bailey's proposed project was not June Farms. He explained that Mr. Bailey's project was much more limited in scale for the number of events to be held as well as time of year and would only be utilized for wedding receptions events; thus, would not be a full-time restaurant. Craig Christ (CC) asked Mr. Gilchrist what he felt would be next step for which the PB would be taking to which he responded that the first order of business would be to make a determination of environmental significance under SEQR. Mr. Gilchrist added that a full Environmental Form had been submitted and that many of the issues concerning potential environmental impacts had been discussed; thus, the PB would need to make a SEQR determination. He then stated that he would like to raise/discuss with the Board the fact the one PB member was absent at this meeting and had previously experienced where votes ended in ties; thus, wanted to know if Board felt a discussion was warranted in this case. CC referenced the case "Alper Restaurant versus Town of Copake" which was regarding a Special Use Permit that had indicated that a tie vote would effectually be a no decision – he then asked Mr. Gilchrist if that was also his understanding. Mr. Gilchrist replied that the law in regards to Special Use Permits and tie votes was that it could be deemed to be non-action and a revote could be done if within the general timeframe of 62 days after the close of the Public Hearing. Jonathan Bernstein (JB) stated he felt that conversation was premature and wished to decide if it would be an issue afterwards. AH stated that it would be nice to know and JB replied that in the number of years he had served as a PB member, he had never seen a tie. Mr. Gilchrist then stated that the SEQR determination would need to be the first order of business. WG asked about the lighting for parking and was referred to page 2 of the site plan which noted the photometric for each light and proposed lighting. WG then asked about lighting for the parallel parking along the driveway as none was reflected on the site plan. Mr. Gilchrist replied that should PB determine that additional lighting was needed in that location, he deemed that to be an appropriate condition. RL agreed with Mr. Gilchrist and added that appropriate downward lighting could be added for that area and did not see it as an environmental impact. A discussion ensued regarding the fill for the additional parking in regards to area of disturbance and determined that the submission of information by the applicant and his engineer as well as the review done by Michael Wager was sufficient to continue the move forward. AH stated that Part 2 of SEQR would be done, item by item. Ms. Ryan explained that the main questions had a yes or no answer and, if yes, the sub-question impact response to the Part 2 questions on SEQR were either: low to small or moderate to large. She then read the questions for the PB members response.

1. Impact on Land – Proposed actions may involve construction on, or physical alteration of, the land surface of the proposed site.

All Board members voted yes and the sub-questions were then covered.

- a. The proposed action may involve construction on land where depth to water table is less than 3 feet.

To clarify for all Mr. Millspaugh was asked to go over the site to which he stated that the event barn would be on a hill and as such removed from the wet areas on the property which were at the foot of the hill along the property line. He added that there was information in the EAF regarding predominate soil type o the property and that the depth of the water table is greater than 10’.

AH voted the response to be none or small impact; for which all agreed.

- b. The proposed action may involve contraction on slopes of 15% or greater
Mr. Millspaugh referred to Page 11 of the EAF and stated 100% of the site development was on slopes less than 10% to which Ms. Ryan confirmed from the EAF file.

AH voted the response to be no impact for which all agreed.

- c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.

Mr. Millspaugh referred to Page 11 of the EAF which reflected that the bedrock on the property was reported to be greater than 20’ below grade.

AH voted the response to be no to small impact for which all agreed.

- d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.

AH stated that the cuts and fills would be balanced for which Mr. Millspaugh agreed.

RL motioned the response to be no impact; seconded by MET and all agreed.

- e. The proposed action may construction that continues for more than one year or in multiple phases.

Mr. Millspaugh was asked if it would be more than a year for which he replied no, it was a single phased project to be done over the course of one construction season.

AH voted the response to be no impact for which all agreed.

- f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).

Mr. Millspaugh stated no use of herbicide was proposed. Mr. Gilchrist added the erosion sediment control measures to be in place during construction were on the site plan to which Mr. Millspaugh agreed.

AH motioned the response to be no to small impact; seconded by RG and all agreed.

- g. The proposed action is, or may be, located within a Coastal Erosion hazard area.

AH voted the response to be no for which all agreed.

h. Other impacts

All members agreed that there were no other impacts to be reviewed for this factor.

2. Impact on Geological Features - The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves).

AH voted the response to be no; seconded by RL and all agreed.

3. Impacts on Surface Water – The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes).

AH voted the response to be no; seconded by RL and all agreed.

4. Impact on Groundwater – The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer.

RL voted for the response to be no; seconded by AH and all agreed.

5. Impact on Flooding – The proposed action may result in development on lands subject to flooding.

RL voted for the response to be no; seconded by AH and all agreed.

6. Impacts on Air – The proposed action may include a state regulated air emission source.

RG voted for the response to be no; seconded by AH and all agreed.

7. Impacts on Plants and Animals – The proposed action may result in a lost of flora or fauna.

RL motioned for the response to be no; seconded by MET and all agreed.

8. Impacts on Agricultural Resources – The proposed action may impact agricultural resources.

RG motioned for the response to be no; seconded by AH and all agreed.

9. Impact on Aesthetic Resources – The land use of the proposed action are obviously different from, or are in sharp contrasts to, current land use patterns between the proposed project and a scenic or aesthetic resource.

RG motioned for the response to be no; seconded by RL and all agreed.

10. Impact on Historic and Archeological Resources – The proposed action may occur in or adjacent to a historic or archaeological resource.

RL motioned for the response to be no; seconded by AH and all agreed.

11. Impact on Open Space and Recreation - The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan.

AH voted the response to be no; seconded by RL and all agreed.

12. Impact on Critical Environmental Areas – The proposed action may be located within or adjacent to a critical environmental area.

Ms. Ryan noted that the Town of Sand Land Lake did not have any Critical Environmental Areas per NYS DEC.

AH voted the response to be no; seconded by MET and all agreed.

13. Impact on Transportation – The proposed action may result in a change to existing transportation systems.

RG motioned for the response to be no; seconded by RL and all agreed.

14. Impact on Energy – The proposed action may cause an impact on any form of energy.

RG motioned for the response to be no; seconded by RL and all agreed.

15. Impact on Noise, Odor, and Light – The proposed action may result in an increase in noise, odors, or outdoor lighting.

RG motioned that the response would be a yes and AH agreed. The sub-questions were then reviewed/discussed.

- a. The proposed action may produce sound above levels established by local regulation.

AH voted for the response to be no to small impact due as events as the proposed project would take place in an insulated building with windows and doors that would be closed. RL agreed and added that a report was submitted by the applicant's engineering firm who had done a study. JB asked whether it was the actual use or construction of the barn to which AH replied it was the use.

RG agreed with AH and seconded the vote and all agreed.

- b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center or nursing home.

RG motioned for the response be no to any blasting; seconded by AH and all agreed.

- c. The proposed action may result in routine odors for more than one hour.

RG motioned for the response to be no impact; seconded by AH and all agreed.

- d. The proposed action may result in light shining onto adjoining properties.

RL motioned for the response to be little to no impact; seconded by AH and all agreed.

- e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.

AH motioned for the response to be no to small impact; seconded by MET and all agreed. WG stated he opposed.

- 16. Impact on Human Health – The proposed action may have an impact on human health from exposure to new or existing sources of contaminants.

RL motioned for the response to be no; seconded by AH and all agreed.

- 17. Consistency with Community Plans - The proposed action is not consistent with adopted land use plans.

RL motioned for the response to be no; seconded by AH and all agreed.

- 18. Consistency with Community Character – The proposed project is inconsistent with existing community character.

After a review of the sub-questions, RG motioned for the response to be no; seconded by AH and all agreed.

CC then stated that Part 2 of SEQR had been completed and no impacts were identified as moderate to large impact may occur. AH motioned to give the project a negative declaration under SEQR due to there not being any significant adverse impacts on the environment; seconded by RL and all agreed.

CC raised Mr. Gilchrist's concern of earlier and stated while there was a quorum available, there were only six PB members present; thus, if a tie vote would result in a non-action. He then asked Mr. Gilchrist what the applicant's preference was on how the PB should proceed. Mr. Gilchrist went over the process timeframe and indicated that there would be appropriate time for a vote at the next PB meeting scheduled for November 18, 2020. CC then read the Town of Sand Lake's Zoning Code on Special Use Permit Reviews – Chapter 250; Section 80 on Criteria and Section 83 on Planning Board Action.

RG stated he wanted to be fair to the applicant and the community and supported the option to approve the application as renewable within a specified period of time set by the PB. He added that he would support the option to approve with a timeframe of one year from the first event. His reasoning for that option was so the Board a may have a full understanding of any impact on the surrounding community.

RL stated he agreed with RG and proposed that the timeframe be extended to two or three years to allow the business to get established. RG stated that the one year had been stated as he had thought that marketing would be done while construction was taking place. MET stated she agreed with RG. RG added that the Special Use Permit could then be renewed. A discussion ensued on the number of events and Mr. Bailey stated it would be a total of 20 annually. WG asked about the number of events being stated as 20 and reminded PB members that June Farms was only allotted a total of 12 events. Ms. Ryan clarified

that, separate from the restaurant, June Farms was permitted to have events for 50 or fewer people with no limit and the 12-event limit was for events of 50 and 250 (capped at 250) people.

RL stated he would support a Special Use Permit (SPU) with conditions such as: renewable application after one year from the first event and a place a limit on the number of events permitted. CC stated that if the SPU was to be approved, all conditions should be done at once for a clean record.

RL stated that as there would be some impact on the community; he would propose the number of events be limited to 17 to allow for some relief from a cumulative effect of every week an event. He added that another condition would be no use of fireworks. Mr. Bailey was asked and replied that he was fine with no fireworks forever. AH and RG stated they would support those conditions. Mr. Gilchrist asked that if the SPU were approved with conditions, he would like for Mr. Bailey to have the ability, at time of renewal, to have the conditions removed (such as the 17-event limit) if it is proven that the facility had operated as presented to the Board. RG and RL agreed with Mr. Gilchrist.

RG and AH agreed that no amplified music outdoors should be a condition. AH stated that a condition for the additional lighting for parking along the driveway be added. Mr. Gilchrist stated that installation of similar lighting in area of parallel parking could be a condition however would need to be reviewed by the Building Department.

AH motioned to approve the Special Use Permit with the following conditions:

1. The special use permit is a one-year renewable special use permit, which shall expire one year from the conducting of the first event. After that one-year period the Applicant and the Planning Board reserve the right to revisit any of the conditions set forth herein should the Planning Board decide to renew said permit;
2. From June 1 through October 31, Friday-Sunday, and shall be limited to maximum number of 17 events per year;
3. Events shall have a maximum of 150 guests per event;
4. For events scheduled on a Friday, all commercial vehicles related to event preparation (including caterer and delivery) shall arrive at the site prior to 2:30 p.m. to reduce traffic during peak travel times. The definition of commercial vehicle shall be as defined in Chapter 250, of the Zoning Code,
5. There shall be no parking of vehicles related to an event on Barnes Road.
6. Music shall end no later than 10:00 p.m. with overall events to end no later than 11:00 p.m.;
7. There shall be no amplification of music outdoors; and
8. There shall be no fireworks.

The motion was seconded by RL. RG was in favor of the motion; both JB and WG opposed and MET abstained.

Mr. Gilchrist stated that the vote resulted in a non-action and asked that the project be placed on the November 18, 2020 PB agenda for a revote. CC and Ms. Ryan clarified that as there was not a majority vote resulted it in being a non-action. AH agreed for the project to be placed on the next PB agenda.

DRAFT RESOLUTION APPROVALS

Boundary Line Adjustment (1/3 related) for Evelyn Francis from Geoffrey & Darlene Mohos

AH motioned to waive the full reading of the draft Resolution; seconded by MET and all approved.

AH motioned to approve the Resolution in its entirety; seconded by MET and all approved.

Boundary Line Adjustment (2/3 related) for Marty & Kathryn Andrews from Geoffrey & Darlene Mohos

AH motioned to waive the full reading of the draft Resolution; seconded by MET and all approved.

AH motioned to approve the Resolution in its entirety; seconded by MET and all approved.

Boundary Line Adjustment (3/3 related) for Kenneth & Nancy Herter from Geoffrey & Darlene Mohos

AH motioned to waive the full reading of the draft Resolution; seconded by MET and all approved.

AH motioned to approve the Resolution in its entirety; seconded by MET and all approved.

MINUTES: MET motioned to accept the June 17, 2020 minutes as presented; seconded by AH and all approved.

ADJOURNMENT – AH motioned to adjourn the meeting at 9:20 pm; seconded by MET and all approved.