

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
April 18, 2019**

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 7:00 PM

MEMBERS PRESENT: Melissa Toni
Jeb Bond
Scott Bendett
Stuart Nippes
Craig Crist, Esq.
Geraldine Burger

MEMBERS ABSENT:

OTHERS PRESENT: Rick Dobert, Betsy Dobert, Michael J. Hoffay, Dan Holser Wendy Holser Hijos; Scott Losee, Joe Dominy Karen DeFazio, John DeFazio, Alma DeFazio, Karen Kelly, Susan Bulmer, Anne LaMora, Kevin Bayly, Steve Reynolds, Linda Reynolds, Terry Lantry

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

Area Variance Application – Public Hearing

Michael Hoffay
Jim Kelly (Property Owner)
2389 Rt. 43
Averill Park, NY 120198
R – Residential Zoning District

Tax Map #159.4-3-5

Lot Size: 70 sq. ft. x 80 sq. ft.

An Area Variance Application for a deficient shoreline setback of 12' related to replacement of an existing deck with a new 16' x 10' sunroom and 8'x 10' deck.

Melissa Toni (MT) explained the order of the meeting. Contractor Michael Hoffay presented on behalf of the Kelly's stating that the property owners wish to replace a current deck with a three-season sunroom and new deck on their home on Crooked Lake. Mr. Hoffay explained that this project will have a flat roofline, be the same width as the house, will continue the character and colors and include white vinyl siding with lattice work underneath. He further stated the only issue is that it will be close to the water; however no closer than the neighbor's deck thus, would not impede side to side vision. MT motioned to open up the meeting to the public; seconded by Scott Bendett (SB) and all approved. MT asked if there was anyone in attendance who wished to provide comments. As no one stepped forward with comments, MT motioned to close the Public Hearing; seconded by SB and all approved. MT then asked the Zoning Board of Appeals (ZBA) members if they had any questions. Jeb Bond (JB) clarified his

understanding in that the overall footprint of this project will not change. Mr. Hoffay agreed and stated that it would be same width/height. He then referred to a site picture and stated the sunroom/deck would not go out as far as the neighbor's deck. JB asked if the sunroom/deck would impede anyone's view and Mr. Hoffay replied that it would not. MT referred to the site picture and asked if the tree would remain. Mr. Hoffay replied that it would remain as it would not be in the way. JB asked if Mr. Hoffay had been to the Planning Board yet and Mr. Hoffay replied no. Mr. Hoffay then asked if he needed to go in front of the Planning Board to which ZBA members replied yes.

SB made a motion to declare the activities proposed under the Area Variance Application as a Type 2 action under SEQR. Seconded by MT. MT then motioned to outline the Area Variance criteria for ZBA member discussion. Prior to MT outlining the criteria, Craig Crist (CC) read the NYS Town Law 267-B 3 for all present:

3. Area variances.

(a)The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b)In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant 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 making such determination the board shall also consider:

- (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;
- (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;
- (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 of appeals, but shall not necessarily preclude the granting of the area variance.

(c)The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4.Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

MT then individually read the five criteria for ZBA members to discuss/comment on:

- (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;
JB stated that he did not see this project as changing the neighborhood. MT agreed adding that the proposed project would fit in with the other structures in the area.

(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;

MT stated that she could not foresee the project be accomplished in another manner. Mr. Hoffay added that due to the size of the lot, the proposed location is the only suitable option.

(3) whether the requested area variance is substantial;

MT stated that in her opinion, this project is not seen as substantial as there are so many in the area with a similar look and ZBA members agreed.

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

ZBA members agreed they did not see any adverse impact and MT commented that she was happy the discussed tree would remain.

(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

MT commented that most situations brought before the ZBA are self-created and reiterated that the criteria's language for self-created does not necessarily preclude the granting of an area variance.

MT then summarized by asking the ZBA members to weigh in on the character of the area and whether the proposed project would fit in. SB stated that the proposed project would absolutely fit in. Stuart Nippes (SN) stated proposed project would be just like the neighbors however with the addition of the sunroom to which MT agreed. Mr. Hoffay added that the project would be closed in with lattice and be attractive with same color scheme making it look very nice.

MT motioned to approve the Area Variance Application as submitted. SB seconded the motion and all approved.

Area Variance Application – Public Hearing

Daniel Holser

Tax Map #159.-1-73

Huntley Road

Averill Park, NY 12018

Lot Size: 5 acres

R – Residential Zoning District

An Area Variance Application for proposed subdivision lot with insufficient road frontage which exceeds the lot to width ratio of 3:1.

Daniel Holser presented before the ZBA stating he resides at 82 Holser Road Extension and is looking to subdivide a 5-acre lot similar to one done approximately 5 years ago. MT then stated that as an area variance was being sought, she asked Mr. Holser what the variance was needed for. Mr. Holser replied that the lot is beautiful and the last lot that he had done is right next to it and had went through the Planning Board with no problem nor did he need to go before the ZBA at that time. He then mentioned the subdivision he had done previously on Oak Hill as well as other subdivisions of land which he is proud of and added that he had not received any complaints on the 5-acre subdivision lot in 2015; thus,

he believed the proposed subdivision would be fine also. MT clarified that Mr. Holser was seeking an area variance for the proposed 5-acre lot as it does not meet the Town's zoning code as the ratio of the lot's width to depth needs to be 3:1 however it is 6:1 for the current proposal. She then asked Mr. Holser if this was right? Mr. Holser responded that he had been informed of that information due to a new law in effect since the 2015 subdivision. MT replied that this portion of the law is the same as has been for several years. Mr. Holser then expressed that he did not understand why this proposed lot was not waived as it did not need a waiver before.

MT thanked Mr. Holser for his comments and motioned to open up the meeting to the public; seconded by SB and all approved. MT asked if anyone in attendance wished to provide public comments, to please raise their hand and then step forward to provide their comments.

Anne LaMora stepped forward and stated that while she resides at 15 Kitty Lane in in East Greenbush, their family owns a 3-acre lot directly across from Mr. Holser for which their son is to be the future owner. Ms. LaMora then expressed the following comments:

1. The law is in place for a reason and did not see a reason not to obey the law for the 3:1 ratio.
2. Approval of this area variance would be the second lot done in that fashion; thus seen as setting a precedence and asked why?
3. In regards to one of the criteria read earlier regarding ability to proceed by other means without the need for an area variance, she commented that this proposed lot could be obtained by redrawing the line to meet the 3:1 rule and accomplish the goal. She added that, in her opinion, it would look terrible to continue in the fashion of spaghetti lots which is essentially what is being created.
4. In regards to other criteria read earlier regarding situation being self-created, she commented that the need for an area variance was self-created and could easily be fixed.

Ms. LaMora then stated she had a question to which she was not sure could be answered. She then referred to Lot 2 on the proposed site plan map and asked if that lot was going all the way to the back of the property? After a review of the site plan map to gain an understanding of the question, Mr. Holser replied no as he was saving that land for grandchildren in case they wanted it. Ms. LaMora then referred to Questions 4 & 11 on the SEQR Application completed in mid-February: Question 4 - Check all land uses that occur on, adjoining and near the proposed action. Ms. LaMora asked if the lot was considered Residential as only Forest and Agriculture had been checked off on the form. Question 11 – Will the Proposed action connect to existing wastewater utilities? As both Yes and No was checked off on the form, Ms. LaMora asked for clarification. MT responded that after closing the public hearing, ZBA would ask Mr. Holser to clarify. Ms. Lamora thanked the ZBA for the opportunity to comment and MT asked if anyone else wished to provide a public comment.

Kevin Bayly stepped forward and stated that he owns a 3-acre lot on Huntly Road. Mr. Bayly reiterated that he also did not see a reason to grant the area variance or escape the current law. He added that he has had to redraw property lines with surveyors and it is not a difficult process nor expensive, especially if selling a 5-acre lot. He further stated that the cost may be a couple of hundred dollars and would protect from spaghetti lots in the future. Mr. Bayly thanked the ZBA for opportunity to provide his comments. MT asked if there were others who wished to provide public comments.

Patrice McFarland stepped forward and stated she has 10-acres on Eastern Union Turnpike that borders Mr. Holser's land. Ms. McFarland asked to review the site plan map as the finalized version was not available for review prior to the meeting. MT reviewed the site plan map with Ms. McFarland and

discussed the proposed lot's ratio issue. Ms. McFarland stated that she understands that when a property owner has a lot of land and wishes to develop it, they will do so to meet their vision as well as to their advantage and then asked Mr. Holser if that was correct? Mr. Holser responded that he was only doing what his family has done for years. Ms. McFarland then asked Mr. Holser if he realized that since his family has developed land, there are now a lot of other folks in the area to which Mr. Holser stated he had not taken count. At this point, MT asked Ms. McFarland to please address her comments to the ZBA members versus Mr. Holser. Ms. McFarland then expressed her concern with the spaghetti lots as she has the most rear frontage to Mr. Holser's property. She further indicated that she is fine with the clearing/logging that has taken place on Mr. Holser's property; however, when the Town sets down rules for all residents to follow, it concerned her that exceptions are being sought when there is enough land to comply. Ms. McFarland thanked the ZBA for the opportunity to provide her comments. MT asked if there was anyone else who wished to provide public comments.

Karen DeFazio stepped forward and stated that she resides at 41 Huntley Road and her mother had purchased the property adjacent to proposed lot being discussed. Ms. DeFazio stated they were not aware of the waiver done for the property they own however if they had been aware, they would have looked at other options. Ms. DeFazio further added that the proposed plan would directly affect them and the area around them. MT thanked Ms. DeFazio for her comments and asked if there was anyone else who wished to provide public comments.

Wendy Holser Hijos stepped forward and stated she is Daniel Holser's middle daughter. Ms. Holser Hijos mentioned that she was born and raised in the village and proud to be a Holser. She further added that her father had served in the US Army and raised six children along with being fourth generation. Ms. Holser Hijos then stated that she has the utmost faith that her father would do the right thing considering the many properties he has sold in Averill Park and Poestenkill – which brought not only monies but also people into the Town. Ms. Holser Hijos then added that all her father wished to do is have a retirement and be able to retire with some dignity. She pointed out that as her father was unaware of the change so it would be like asking him to take a part of his retirement and give it away for something that could be avoided if he were to be provided the variance. Ms. Holser Hijos concluded that her father has done nothing but good for the Town, her family and other families as well as have served on the Board; thus, she asked the ZBA to dismiss the ridiculousness and allow her father to move forward by approving the area variance. Ms. Holser Hijos thanked the ZBA for opportunity to provide her comments. MT asked if there was anyone else who wished to provide public comments.

Kevin Bayly asked to provide an additional comment and stated that laws are created for a reason and are not ridiculous but rather created to safeguard the Town. He further stated that many families, including his own, have resided in Sand Lake for a long time - some of them longer than Mr. Holser. Mr. Bayly then stated that, in his opinion, the Town does not owe Mr. Holser anything but rather that Mr. Holser owed the Town as it has allowed him to make a living with the granting of a waiver in the past for which Mr. Bayly had no issues. Mr. Bayly then added that the Town has seen more construction in the last 5 years than there had been in the last 50 and folks now need to pay attention to the law along with the intent to which they were passed. He concluded by asking the ZBA to disapprove the request for an area variance adding that he did not wish to halt anyone from building, however asked that the line be moved to comply with the law and protect from spaghetti lots. Mr. Bayly thanked the ZBA for opportunity to provide his additional comments. MT asked if there was anyone else who wished to provide public comments.

Patrice McFarland asked to provide additional comments and stated she concurred with Mr. Bayly in that no one is against the developing or making of money; however, the Town is changing. She added that she has been here for 40 years, noted all the changes and was concerned for the quality of the environment. Ms. McFarland also indicated not being against the building of a house; however, everyone is being asked to go by the same laws for good reason. She further added that the Town was very thoughtful in their development of the laws, and while there are lots of reasons for a variance, the proposed lot is a concern as there are other lots for which it would set precedence. Ms. McFarland thanks the ZBA for the opportunity to provide her additional comments. MT asked if there was anyone else who wished to provide public comments. As there were no additional comments, MT motioned to close the Public Hearing at 7:31 PM; seconded by JB and all approved.

MT then announced that the ZBA had received the recommendation from the Planning Board (PB) who had met the evening before and accepted public comment. MT then summarized the PB's negative recommendation for not meeting Town codes for the following reasons:

1. Alleged difficulty was self-created – applicant has ability to meet the 3:1 ratio however does not want to do so.
2. The benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.
3. The applicant sold the property before checking the Zoning Code subdivision regulations.
4. The PB did not have confidence that applicant would not return for an Area Variance for the remaining configuration of the property.

MT explained that the above was the opinion of the PB which the ZBA had requested and should be factored into their decision. MT then spoke to the email received from Karol O'Sullivan which conveyed comments and concerns, in the negative, from other neighbors who had called her as they were unable to make the Public Hearing meeting on this Area Variance application.

MT then asked CC to read the NYS Town Law 267-B 3 for all present:

3. Area variances.

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(b)In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant 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 making such determination the board shall also consider:

- (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;
- (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;
- (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 of appeals, but shall not necessarily preclude the granting of the area variance.

(c)The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

MT then invited the ZBA members to talk about application as a board and asked them to take into consideration the benefits of the applicant as weighed against the detriment to the health, safety and welfare of the neighborhood and community. MT stated the community and adjacent neighborhood had definitely spoken and then she outlined quotes from them as follows:

“Believe the approval of variance would be negative and a detriment to their community.”
“Want protection from variances of this type and spaghetti lots with inadequate ratios.”
“Option seen for Mr. Holser to move the line.”

MT then added that she was in agreement with the neighbor’s assessment of the application after having been out to the site and viewing it. JB stated that Zoning Codes were developed to avoid spaghetti lots which a number of attendees have mentioned. He further stated that according to the site plan map, the ratio is not in compliance nor does it come close; thus, there should be some give and take and did not see proposed plan as acceptable according to the Zoning law.

SN stated that he also agreed with the other two board members as well as the community. SN further added that he is familiar with such work and if the line were moved, there would still be two viable building lots. He closed by stating he is aware that Mr. Holser does good work, however the application for an Area Variance can be avoided by just moving the line.

MT asked ZBA members if there were any other comments. Geraldine Burger (GB) stated she would like to hear what Mr. Holser had to say. Mr. Holser explained the property’s typography indicating that after the first 3 three acres in front part of property, there is then the power line with land dropping off 20-30 feet down and it is wet in certain spots. GB asked Mr. Holser if he was stating that the back of the proposed lot is not usable. Mr. Holser responded indicating that the buyer of the proposed lot would be doing him a favor as the back of that property would not be usable to anyone else. Mr. Holser added that there is also some wetland directly across from Holser Road that would never be built on; if he were to attach it to another lot, it would add over two acres and he would be in a similar ratio situation. He added that his choices would be to either add that other parcel of wetland to a future proposed lot or leave it for the Town to foreclose on. He closed stating he has developed much property and was shocked that no one could see what he was trying to accomplish. GB asked Mr. Holser if there was any way he could change the line for proposed lot. Mr. Holser responded that anything can be done however in the past only had to have 150’ of road frontage and setbacks on the sides which made a lot of sense. He further added that as there are setbacks still in place, there was nothing wrong with his proposed lot rather it is the regulation that is wrong.

MT stated that it was time to cover the 5 criteria for an Area Variance:

- (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;
MT stated that the ZBA heard from a good number of the public that the variance would impact the character of their neighborhood and be a detriment to nearby properties. As there were no additional thoughts/comments from ZBA members, MT moved onto the next criteria.
- (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;
MT stated she believed the answer to be 'yes' as the lot can meet the zoning code with a shift of the line still allowing for two lots. As there were no additional thoughts/comments from ZBA members, MT moved onto the next criteria.
- (3) whether the requested area variance is substantial;
MT stated that in her opinion, this request is viewed as substantial as the code requires a 3:1 ratio and application is for 6:1. JB stated that he agreed. As there were no additional thoughts/comments from ZBA members, MT moved onto the next criteria.
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
MT reiterated comments from the public indicating it was their opinion that the quality of the environment would be impacted and they did not want to set a precedence. As there were no additional thoughts/comments from ZBA members, MT moved onto the next criteria.
- (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.
MT commented that most situations brought before the ZBA are self-created and reiterated the criteria's language for self-created does not necessarily preclude the granting of an area variance.

MT reiterated that the ZBA shall take into consideration the benefit to the applicant 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 making such determination the board shall also consider the evaluation of the 5 criteria previously discussed along with the PB's negative recommendation. Based on information provided, MT made a motion to deny Mr. Holser the Area Variance. Seconded by JB and all in favor of the denial except Scott Bendett (SB). Prior to GB providing her determination, Craig Crist (CC) stated that the SEQR determination should be made first and MT then asked to hold on motion for denial. MT stated while the SEQR application did need corrections, she did not see it as necessary as it would not affect their decision. JB made a motion to declare the activities proposed under the Area Variance Application as a Type 2 action under SEQR. Seconded by MT and all approved. MT then returned to making the determination of denial citing there were 3 in favor and 1 opposed. MT then asked GB to make her determination in which GB abstained due to not being present at last ZBA meeting. MT stated to Mr. Holser that his Area Variance request has been denied and added that he could come back should he wish with new information or move the lot line to be in compliance with zoning.

MINUTES – JB commented that the March 21, 2019 minutes be corrected to reflect that Craig Crist was not present. MT made a motion to accept the minutes with the one edit and SB seconded the motion and all approved.

MT announced that she would not be available for the make the May meeting.

ADJOURNMENT – MT motioned to close the meeting at 7:11 PM, JB seconded the motion and all approved to close the meeting.