

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
August 13, 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 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 7:03 PM

MEMBERS PRESENT: Melissa Toni
Geraldine Burger
Scott Bendett
Amy Lent
Wayne Gendron
Craig Crist, Esq.

MEMBERS ABSENT:

OTHERS PRESENT: William Keniry, Ann Bower, Pat Simon, Sierra Thibeault, Catherine Headley, Monica Ryan (Town Planner)

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

Area Variance Applications (2) – Public Hearing

Estate of Michael F. Lomonoco, Jr.

Bonnie Jo Willard, Executrix

60 & 64 Loon Creek Lane

Averill Park, NY 12018

R – Residential Zoning District

An Area Variance Application related to a two-lot subdivision creating lots with insufficient area, side setback and lot width.

Tax Map#158.4-2-3

Lot Size: .425 +/-acres

Proposed Lot Size: .075 acres

Melissa Toni (MT) explained the Area Variance Public Hearing process and asked the applicant to explain the proposed project. Attorney William Keniry was present and stated he represented Bonnie Jo Willard who was the executrix of the Michael F. Lomonoco, Jr. Estate. He summarized the project previously presented in full at the June 18, 2020 Zoning Board of Appeals (ZBA) meeting. MT noted that the Public Hearing for these applications had been initially opened at the July 9, 2020 ZBA meeting and had remained opened through this meeting to allow time for the receipt of a Recommendation from the Planning Board (PB). MT motioned to open the continued Public Hearing at 7:02pm; seconded by Geraldine Burger (GB) and all approved. MT read the PB Recommendation to the ZBA as follows:

Please be advised that at its regular meeting on July 15, 2020, the Town of Sand Lake Planning Board met and, as one of its agenda items, discussed the aforementioned Area Variance Application pending before the Zoning Board of Appeals. The Planning Board is providing a positive recommendation for this application based on configuration of the lots and subject to the following condition:

The interior lot line subdividing the parcel shall be no closer than 5' to the dwelling located on the property identified as "Lots 24, 25, 26".

MT then asked Mr. Keniry if she was correct in that the above stated condition could be met for which he agreed. Wayne Gendron (WG) stated that he struggled with the 5' interior lot line for the two-story home due to any needed maintenance on that side of the home or if a fence was to be installed between the homes. Mr. Keniry replied a detailed discussion had taken place with the PB regarding that interior lot line. He also added that the character of the neighborhood in general was incredible as many only had 2' from the corner of the house to lot line; thus, it was a compromise to make the best of the situation allowing for Lot 23 to have a full crushed stone parking area on the westerly side. Monica Ryan pointed out that any future improvements or changes to either property would require a Scenic Preservation Application as they were within 100' of the lake.

MT then explained the details of the needed three Area Variances: 1) deficient lot size of .075 and .35-acre. Town of Sand Lake Code requires a minimum of 1-acre. 2) deficient lot width of 50.86' on Lot-23 (Lot 1). Town of Sand Lake Code requires a minimum of 150'. 3) deficient side yard setback of 15' and 2.2'. Town of Sand Lake Code requires a minimum of 20' on one side for a total of 50'.

With no written or online public comments received, MT motioned to close the Public Hearing at 7:19pm; seconded by Scott Bendett (SB) and all approved.

A motion was made by MT, seconded by WG and unanimously carried to give this Area Variance Application and the Minor Subdivision Application a Negative Declaration under SEQR and that the proposed action described will not have a significant adverse effect on the environment, and a Draft Environmental Impact Statement need not be prepared.

MT then went over the 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.
GB stated that as no other changes were taking place, therefore little impact. MT replied that she agreed.
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 there was not another method to achieve the desired outcome for which ZBA members agreed.
3. Whether the requested area variance is substantial.
MT stated the area variances sought were not substantial and added that one of them became less as a result of the PB Recommendation. ZBA members agreed.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.
SB noted that the situation already existed for which ZBA members agreed.
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 stated that based on the information presented, the situation had not been self-created as the layout of the property already existed.

SB motioned to approve both Area Variance Applications as submitted for both Lot 1 and Lot 2 subject to the following condition: New maps be submitted to reflect the interior lot line subdividing the parcel shall be no closer than 5' to the dwelling located on the property identified as "Lots 24, 25, 26 (Lot 2)". MT

seconded the motion and all approved. Mr. Keniry agreed to accept the one motion to cover both Area Variance Applications.

Area Variance Application and Public Hearing

Ann Bower

26 Stone Camp Way

Averill Park, NY 12018

R – Residential Zoning District

An Area Variance Application to replace an existing deck with a screened in porch within 32' of the rear lot line creating a deficient rear yard setback.

Tax Map #170.2-1-3

Lot Size: 3.81 acres

MT asked the applicant to explain the proposed project. Anne Bower was present to represent the project and stated an Area Variance was being sought to cover and screen-in the existing deck that would be 32' from the lake.

MT motioned to open the Public Hearing at 7:28 pm; seconded by GB and all approved. MT stated Area Variance was needed due to the Zoning Code requirement of 50' for the rear yard setback and the proposed project was 32'; thus, required an 18' Area Variance. With no written or online public comments received, MT motioned to close the Public Hearing at 7:29pm; seconded by SB and all approved.

GB motioned to declare the Town of Sand Lake ZBA as Lead Agency and classified the requested Area Variance as a Type 2 action under SEQR; seconded by MT and all approved.

MT then went over the 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.

GB stated no impact was seen as no other changes were taking place. MT added that the site visit revealed that the project would not obstruct the neighbor's view and would be a minor addition to the property. ZBA members agreed.

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.

AL stated that there was not another method to achieve the desired outcome for which ZBA members agreed.

3. Whether the requested area variance is substantial.

MT stated the area variance sought was not seen as substantial. ZBA members agreed.

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

SB questioned whether the 32' was from the shoreline or the high watermark. Ms. Ryan replied the 32' would be from the property line as it was treated as a rear yard setback area variance. MT reviewed the drawings and believed it would be from the high watermark. CC noted that on manmade lakes, it is based on property boundaries versus high watermark. It was determined that the proposed variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or district and noted there would not be any ground disturbance or trees removed.

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 noted that as with most matters that came before the ZBA, the variance is self-created because the applicant desired to replace the existing deck with a screened-in porch

created the need for the variance. However, no other options were seen to achieve the desired outcome.

SB motioned to approve the Area Variance Application as submitted; seconded by GB and all approved.

Area Variance Application and Public Hearing

Sierra Thibeault (applicant)

Tax Map #158.-2-15.1

Catherine Headley (property owner)

124 Garner Road

Lot Size: 0.42 acres

Averill Park, NY 12018

R – Residential Zoning District

An Area Variance Application to place a portable accessory dwelling unit in the front yard of a residential lot.

MT went over the Area Variance process and asked that the applicant to explain the proposed project. Sierra Thibeault and Catherine Headley were present to represent the application. MT opened the Public Hearing at 7:37pm; seconded by Amy Lent (AL) and all approved. MT stated a 100% Area Variance was needed to place a dwelling (tiny home) in the front yard. Sierra Thibeault summarized the project originally presented at the July 9, 2020 ZBA meeting. ZBA members reviewed the site pictures. MT then read a public comment submitted via email by Karol O’Sullivan (attached). With no additional written or online public comments received, MT motioned to close the Public Hearing at 7:44pm; seconded by SB and all approved. MT noted that the written public comment submitted had strong feedback on the five criteria utilized by the ZBA in making a determination on an Area Variance request. MT asked the applicant if there was a way to pull the tiny home alongside the house or in the backyard. Ms. Thibeault replied there was not a way to do so without causing damage or be intrusive to the neighbors. Ms. Headley added it may be possible to pull the tiny home dwelling back a little bit closer to the property line. Site pictures were reviewed. Ms. Thibeault commented that there was only one direction that the tiny home was visible from the road. She added that it could not be seen from Thais Road or Pond Hollow. Ms. Headley state that an alternate location would be on the right side of the house which is open and level; however, it would then be right in view of the neighbor. MT noted that the back edge of the tiny home was in front of the front façade of the main home and asked if there was a way to pull the tiny home back a bit. Ms. Thibeault replied it could go closer to the tree line and then back approximately 5-6’ which would tuck in the back corner of the tiny home. Ms. Ryan clarified that the tiny home would then be more parallel to the tree line and angled a bit. MT replied that location would definitely be better. AL commented that she had been in that neighborhood several times recently and asked what the Zoning Code was for RVs being parked in yards. Ms. Ryan explained that the 2017 Zoning Code update allows RV to be parked in the side or back yards. She further explained that residing in an RV is not allowed for more than 30 consecutive days in a calendar year. Ms. Ryan stated if the tiny home was to be viewed as an RV, it would then require two area variances: one for the amount of time lived in; and, the other for the location. MT added that would also set a precedence for folks to live in RVs. AL replied that idea of setting precedence would be worrisome. She added that she would rather see the tiny home on the right side of yard considering it is meant to be a temporary option. MT asked Ms. Ryan if the tiny home was on the right side of yard and pulled back, would any Area Variances be needed. Ms. Ryan replied no as long as it was 5’ from the side yard property line. A site picture of the right side of yard was then reviewed. Ms. Thibeault stated that in response to Ms. O’Sullivan’s public comment, it is noted that there were at least five houses on her road that had campers parked in the front yard. MT asked the applicant if she had spoken with the neighbor next door. Ms. Thibeault replied yes and their response was that they preferred the tiny home in its current location rather than the right side of yard as it would then be right by their bedroom room and on the side of yard where they hosted parties. GB stated that she thought if tiny home could be moved back, 4’-6’, it may visually appear to look like it was attached to the main home

as the road was at an angle. MT stated that there was a total of four options for the ZBA to consider: 1) deny the Area Variance request; 2) relocate the tiny home to the backyard which would not require an Area Variance however difficult location due to the leach field; 3) relocate tiny home to side yard of neighbor; however would clearly be seen by them visually; 4) modified approach of current location to shift towards the tree line and pull it back. An aerial site picture is reviewed and Ms. Thibeault explained that moving back 6' towards the tree line would bring the tiny home approximately 12' from the property line and then pull it back 6' to meet the required 10' distance from main home. MT stated that with the modified approach, it would no longer be a 100% Area Variance which would be an improvement and that it seemed to be a better alternative. She added that as the tiny home would not be permanent, a 2-3-year expiration date could be conditioned on an approval. MT motioned to declare the ZBA as Lead Agency and classified the Area Variance Application as a Type 2 action under SEQR; seconded by GB and all approved.

MT then went over the 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.

MT referred to the public comment that was submitted and stated that the current location was viewed as undesirable due 3 sides of the tiny home being visible from the road. She stated that it was also noted that any items stored outside would also be visible for all to see. MT added that an agreement would be needed by the applicant not to store items outside of the tiny home on its 3 visible sides. Ms. Thibeault replied there would not be any items stored outside.

2. Whether the requested area variance is substantial.

MT stated the original area variance sought was 100% and thus substantial; however, the modified approach would be less substantial as 18' versus 24' of the tiny home in the front yard would bring it down to 80%. WG asked why the tiny home could not be moved back further to meet code. Ms. Thibeault replied that due to layout of the property line, the 10' distance from the main home could not be met. WG commented that he continued to think there is room for it to be moved back and close to the tree line which would result in either none or a few feet being in front of the main home. Ms. Thibeault replied that area would be an issue as her front door would be at the location where snow dropped off the metal roof of the main house and compacted into a bank 6' high; thus, causing a safety issue. WG replied that could be resolved via maintenance.

CC commented that it would be to the applicant's advantage to ensure measurements are correct. At that point, MT stated that she felt exact measurements were needed for how far back the tiny home could go for which ZBA members agreed. The applicant stated she was in agreement to postpone the review of the application until the next meeting in order that she may obtain and furnish actual measurements to the Town within two weeks. Ms. Headley noted there was a property pin in the front and she believed there was one in the back. She added that the ZBA members were welcome to do a site visit to view the pins. Based on the outcome, MT motioned to reopen the Public Hearing at 8:15pm; seconded by WG and all approved.

DRAFT RESOLUTION APPROVALS

Area Variance Application for Frederick Nick

MT motioned to waive the full reading of the drafted Resolution; seconded by SB and all approved.

MT motioned to approve the Resolution in its entirety; seconded by SB and all approved.

Adoption of Negative Declaration for Frederick Nick

Minutes 8/13/20 ZBA

MT motioned to waive the full reading of the drafted Negative Declaration; seconded by SB and all approved.

MT motioned to approve the Negative Declaration in its entirety; seconded by WG and all approved.

Area Variance Application for Morrissey Contracting, LLC

MT motioned to waive the full reading of the drafted Resolution; seconded by SB and all approved.

MT motioned to approve the Resolution in its entirety; seconded by SB and all approved.

ADJOURNMENT – MT motioned to close the meeting at 8:23pm; seconded by SB and all approved.