

**Town of Sand Lake  
Zoning Board of Appeals (ZBA)  
August 15, 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 7:01 PM

MEMBERS PRESENT: Melisa Toni  
Jeb Bond  
Craig Crist, Esq.  
Geraldine Burger  
Scott Bendett

MEMBERS ABSENT: Stuart Nippes

OTHERS PRESENT: Neil Van Buren, Lawrence Herzog

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

**Area Variance Application and Public Hearing**

Neil VanBuren **Tax Map #148.3-2-46**  
5 Victor Lane  
Averill Park, NY 12018 Lot Size: .40 acres  
R – Residential Zoning District/Commercial Reuse Overlay Zoning District

An Area Variance Application to construct a detached garage in the front yard.

Melissa Toni (MT) explained the Area Variance and Public Hearing process. MT motioned to open the Public Hearing at 7:02pm; seconded by Jeb Bond (JB) and all approved. Neil VanBuren presented and stated that he is seeking an Area Variance due to insufficient setback for the proposed building of a 24'x26' garage in the front yard which would be approximately 20-21' from the road. He added that the proposed garage would match the house, siding and trim. Scott Bendett (SB) stated that he had visited the site and the location of proposed project seemed like a side yard. Mr. Van Buren replied that he had been told by Michael Wager that he has two front yards due to being on a corner lot. Craig Crist (CC) commented that certain lots are configured with two front yards and it was the Building Inspector who determined that information. JB stated that he had also visited the site and the stakes seemed to be off in regards to the footage for setback. Mr. VanBuren replied that the placement of the stakes was approximate. JB referred to a site picture and asked if the proposed building would be setback 22'. Mr. VanBuren replied yes. JB then noted in the site picture, that the stakes had been even with an existing tree and stated that would be further than 22'. Mr. VanBuren replied that the proposed garage would begin 5' from his fence, if feasible for his contractor. JB then asked if the tree would stay or be removed. Mr. VanBuren replied that the tree would remain, however he may eventually have an issue as it grows. MT asked JB if he thought the measurement of 22' was incorrect. JB responded that he felt it would be more than 22' which would be good as the required setback is 50'. MT then discussed the

discrepancy in the application which indicated a 200' setback. She added that the application was most likely completed prior to Michael Wager visiting the site and advising the owner of having two front yards. JB stated that the application information received was inaccurate for which MT agreed. He added that the location continued to appear a greater distance than shown in the site picture. Mr. Van Buren replied that he had tried to place the proposed garage back as far as he could and left some room to mow or place a sidewalk between the fence and garage. MT asked for public comments and Lawrence Herzog stepped forward. Mr. Herzog commented that one concern he had was addressed by Mr. VanBuren in that the proposed garage would conform to the house. Mr. Herzog then commented that as Mr. VanBuren worked on cars, he did not wish to see things building up outside/around the garage. Mr. VanBuren replied that he does not work on cars as a hobby and if he had the need to do so, he would be able to do it in the proposed garage. MT explained that she had also done a site visit and based on that, she was not in favor of the proposed location as it is too close to the road. She added that this section of the road had a good plane frontage and the proposed location of garage would have it sticking way out. MT then asked Mr. VanBuren if he could explain why the proposed garage could not be placed in any other location. Mr. VanBuren replied that the back of the yard was on a hill that consisted of an old filled in foundation and added that it would be close to the neighbor. He explained that location would be an exorbitant amount of money to excavate for a driveway and result in having to walk up a hill to access the garage. Mr. VanBuren commented that his parcel of land is configured oddly and as such while that location is his property, it is the back of his neighbor's house. Geraldine Burger (GB) commented that it is not a normal lot. Mr. VanBuren added that with the pool off to the one side, there is no other area for the proposed garage. GB asked if the wife would be parking in the proposed garage. Mr. VanBuren replied yes along with her Mustang during the winter and his truck would be parked outside. With no other questions or comments, MT closed the Public Hearing at 7:09pm; seconded by SB and all approved. CC then 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;  
GB stated that if Mr. VanBuren was to continue the proposed garage with the same exterior and trim as the house, she did not view it as an undesirable change to the neighborhood. SB agreed. MT referred to the site picture and stated that based upon her visit to the property, she felt there would be site visibility issues of Route 43 for the neighbors. GB disagreed stating that she did not see the effect as detrimental.
- (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 upon site visit it appeared that the garage could be placed on the other side of the house without much excavation; thus, still felt there is an opportunity to be within the zoning laws. Mr. VanBuren asked if MT meant on top of the hill. MT replied no, just on the other side. Mr. VanBuren stated that location would be close to the neighbor and consisted of natural drainage. MT clarified the alternate location via the site picture and stated that based on a review and visit by other Town employees, that location could be a possibility with some excavation.
- (3)** whether the requested area variance is substantial;  
MT stated that the area variance requested for the location of the proposed structure is substantial (100%) since the required setback is 200'. Mr. VanBuren replied that he was confused as it was the first time he had heard about the 200' setback. MT explained that after review and discussion with the Town Planner and Building Inspector, it was determined that as the property is on a corner lot, it has a 200' setback due to having two front yards. Mr. VanBuren replied that 200' would be to the end of his lot. MT replied that the house/property predated the 200' setback which is why the Area Variance is being sought for a 22' setback. JB commented that part of the problem is that the front door to the house faces Route 43. Mr. VanBuren replied that was his front porch and there is also an entrance on the side as well as in the back for a total of three entrance doors. JB asked Mr. VanBuren what he called his front door. Mr. VanBuren replied that when he pulls into the driveway, he utilizes the side door but guessed it would be considered the front. JB replied that because that location is deemed the front explained why the issue of the 200' came into play.
- (4)** whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and  
GB stated that she did not see the proposed variance as have any effect. MT stated that she continued to see potential visual issues from the two neighboring houses.
- (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 most Area Variance requests seen by the ZBA have been self-created. She noted that a pool had been installed recently in a location that the garage could have been built. Mr. VanBuren replied that the pool was installed five years ago. MT then asked if Mr. VanBuren's thought at that time was that the garage was not wanted. Mr. VanBuren replied that he could

not afford the garage at that time. He added that there had been an old pool up on the hill however was shaded by trees so when the pool was destroyed, it was replaced at the bottom of the hill in a sunny area.

MT then asked ZBA members if there were any questions. GB asked that the first criteria be reread. CC reread it: 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 the five criteria factors listed above. MT then stated she considered Route 43 to be one of the Town's main highways with the plane of construction in this area seen as very seamless when driving through as the houses aligned with one another. She added that was done via proper planning and viewed the proposed location of the structure as breaking that up as well as affecting the visibility of the neighbors. MT indicated these were her reasons for being in the negative on the granting of this Area Variance. CC pointed out that there was a ZBA member who was absent and, as such, if the vote was 2/2, it would be considered a denial. He then stated that it would be Mr. VanBuren's decision on whether he wished to proceed or close the Public Hearing and wait until the next meeting so the 5<sup>th</sup> ZBA member could be present. SB asked Mr. VanBuren if he was currently parking in the proposed location. Mr. VanBuren replied yes and that a driveway to the proposed location already existed. SB asked if there were currently cars in the same spot as the garage would be placed. Mr. VanBuren agreed and added he would then be able to pull into the garage. MT stated that in her opinion a structure in that location would be completely different than cars parked in that area. GB stated that while she agreed with MT's comments, yet noted that further down Route 43, going towards Averill Park, many buildings were not in the same alignment. CC then reiterated to Mr. VanBuren that it was his choice to either proceed or stop the process at this point. Mr. VanBuren replied that with his line of work it was difficult to make the ZBA meetings and he had a contractor ready to begin work if approval was received. SB stated that he wanted to know for certain whether the setback was 200' or 50'. CC replied that the ZBA may not want to proceed until the discrepancy on footage for setback was clarified. Mr. VanBuren explained that in a conversation with Michel Wager, back in June, is what led him to believe that the measurements were fine and that the Area Variance application needed to be filed asap in order to be placed on an upcoming ZBA agenda. MT explained that as the Planning Coordinator who had reviewed the application and site layout was not in attendance, therefore agreed that clarification should be sought on the footage for setback. GB stated that she continued to consider the first part of the criteria for which they are to base an Area Variance determination. CC reread the following: 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 the five criteria factors listed above. CC then repointed out to Mr. VanBuren that there were only four ZBA members present. He added that, as heard, some of the ZBA's preliminary responses were a no and three yes votes would be needed for the Area Variance to be passed/granted. Mr. VanBuren replied that he understood. CC stated it was Mr. VanBuren's right to wait and have the ZBA vote on the Area Variance at next month's meeting. MT added that clarification of the 200' versus 50' setback could possible help however did not want to delay the process. Mr. VanBuren replied that he was trying to get it done before winter. GB commented that in reviewing the criteria for which the ZBA is to take into consideration, the benefit to the applicant and if the variance is granted as weighed against the detriment of health, safety and welfare, she did not feel the health, safety or welfare of the

neighborhood or the community would be affected. MT then asked GB if that meant she would mean a probable yes. GB replied you could assume that. MT then asked Mr. VanBuren how he wished to proceed. Mr. VanBuren replied that while he wanted the process to be over, he may want to wait on the vote. CC restated the two choices would either be to vote now or wait until the next meeting for a vote. Mr. VanBuren asked the date of the next meeting. MT replied it would be September 19<sup>th</sup>. Mr. VanBuren stated that as a vote at this meeting did not seem to be favorable, he would rather have a chance at the next meeting with all ZBA members present. CC then asked Mr. VanBuren if that response meant that he requested the Area Variance to be voted on at the next meeting. Mr. VanBuren replied yes. MT stated that the Public Hearing was to be left as closed. Mr. VanBuren commented that as he only heard one yes, he wondered if he should wait as another yes would not result in the Area Variance being granted. CC restated that the decision to proceed or not was with Mr. VanBuren and it should either be a yes or no. Mr. VanBuren replied that he would postpone the vote until the next meeting. He then asked if he needed to leave the stakes in the ground. MT replied that as the fifth ZBA member may not have had a chance to view the site, leaving the stakes in the ground may be helpful.

**MEETING MINUTES –**

**ADJOURNMENT** – MT motioned to close the meeting at 7:31 PM, seconded by JB and all approved to close the meeting.