

**Town of Sand Lake  
Zoning Board of Appeals (ZBA)  
July 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: Melisa Toni opened the meeting at 7:00 PM

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

MEMBERS ABSENT:

OTHERS PRESENT: William Glasser, Neil Van Buren, Wendy Hijos, Daniel Holser, Suzanne Long, Dave and Diane Fazioli

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

**Area Variance Application and Public Hearing**

Steven Cusack (Applicant)

Geraldine Swimm (Property Owner)

46 Old South Road

West Sand Lake, NY 12196

AR – Agriculture/Residential Zoning District

**Tax Map #147.3-2-27**

Lot Size: 10.42 acres

An Area Variance Application for a lot with an insufficient 3.05:1 width to depth ratio created as a result of a proposed Boundary Line Adjustment.

Melisa Toni (MT) explained the Public Hearing process. Surveyor William Glasser presented and explained that a proposed Boundary Line Adjustment (BLA) between the Cusack and Swimm's properties of 50' wide and approximately 363' deep resulted in a 3:05/1 width to depth ratio for the primary lot and need for an Area Variance. Craig Crist (CC) clarified that these were single family parcels for which Mr. Glasser agreed and added that there is currently a house on each parcel. MT clarified the current width to depth ratio as 3:05/1 and Scott Bendett (SB) commented it was over the ratio by just about 17'. MT motioned to open the Public Hearing at 7:30pm; seconded by SB and all approved. Dave Fazioli stepped forward and stated he resided at 16 Oriel Ave in West Sand Lake. He asked if there were structures on the properties currently. Mr. Glasser replied yes and referred to the site plan map to explain the BLA and need for Area Variance. Mr. Fazioli asked if the changes meant any additional development for which Mr. Glasser replied no and stated that the Cusack's just wanted a buffer space between their driveway and the property next to them. Diane Fazioli stepped forward and stated the larger parcel is for sale; thus wondered if the buyer has future plans for a development. Mr. Glasser

replied that he was not aware of that happening as there is no other way to access the property. Ms. Fazioli asked if the primary lot/house is being sold and why make this change now. Mr. Glasser explained that the discussions for the changes started way before the property had been put up for sale. Ms. Fazioli replied that was the reason for their concern and did not understand why the new owner could not ask for the Area Variance. She added that they would have no idea who was buying the house nor what their plans would be and concerned the Area Variance could lead to an issue. Mr. Glasser replied that the Cusack's were looking for some additional space. Mr. Glasser then explained that the need for the Area Variance stemmed from the proposed 50' strip being conveyed to the Cusack's and referred to the site plan map to show the current location of their driveway. He also referred to the site plan map and pointed out the undevelopable wetlands on the primary parcel. Ms. Fazioli restated that she did not understand why it was being done now. Mr. Glasser replied that the parties wanted to get it done before the sale and reiterated that the parties had been in discussion about this 50' strip since last year. MT replied that she understood the concerns and explained that the 50' strip could not be turned into another driveway as it would require coming into the Town for an Area Variance and Site Plan Review. Stuart Nippes (SN) then shared with the Fazioli's an aerial view on his tablet and explained how there would not be access to the larger parcel except through the Hoffay's property. Ms. Fazioli commented that as those residents have lived there for years, that was what made her wonder why it is so important now. MT replied that the Cusack's were the ones looking for the lot line adjustment in order to have a buffer between the properties. Ms. Fazioli continued to be confused as to why it was needed. The Zoning Board of Appeals (ZBA) members restated for her that no other driveway could be made of that 50' strip and that it was only being added onto the Cusack's current property. The Fazioli's thanked ZBA members for their time and explanations. As there were no further public comments, MT motioned to close the Public Hearing at 7:09pm; seconded by SB and all approved. MT questioned if this would be Type 2. CC replied by reading two applicable Type 2 actions that could possibly be applied to this application: 1) granting of individual setback and lot line variances adjustments or 2) granting of an Area Variance for a single family, two-family or three-family residence. He added that for this situation, it would be singular. MT made the motion to classify this action as a Type 2 under SEQRA so no further analysis is needed; seconded by SB and all approved.

MT then read the criteria for which ZBA members would consider for approval or denial of the Area Variance application: 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 following five factors. MT individually read the factors for 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 replied that this action was not seen as undesirable. MT agreed and added that the request was very minor and the second parcel still consisted of approximately 10 acres.
- (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 commented most likely not due to the driveway being right on the edge of the property line; thus, the variance is needed to gain the buffer as no other option is available.
- (3)** whether the requested area variance is substantial;  
MT replied that a ratio of 3:05/1 is as minor as it gets.
- (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 commented that the intent is not for development thus would not cause any actual construction.

- (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 applications of this nature are self-created. She added that there was not another other option available to gain the buffer.

MT motioned to approve the Area Variance Application as submitted based on the five criteria above. SB seconded the motion and all approved.

**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.

Neil VanBuren presented and stated that he is seeking an Area Variance due to insufficient setback for the proposed building of a garage in the front yard which would be approximately 20-21' from the road. Mr. Van Buren then stated that his neighbor came to see him with the "neighbor letter" prepared by the Town which stated that a 40'x60' pole barn was being proposed versus the correct size of 24'x26'. Mr. VanBuren stated that he had clarified for the neighbor the correct size of the proposed garage and that the neighbor was fine with the proposed action. SB explained that a 40'x60' had been proposed recently by another applicant; thus, may be the reason for incorrect information on the "neighbor letter" and Mr. VanBuren agreed. CC then asked if other neighbors had received letters. Mr. VanBuren replied that while he was unaware of that information, no one else had come to him. CC expressed a concern with the defect in the posted notice and suggested that the Town have the Public Hearing re-noticed in order that any interested party would know the reason why the Area Variance was being sought. MT agreed adding that a pole barn is a very different structure than a garage. SB asked MT if a special ZBA meeting or different time could be done in order that Mr. VanBuren did not have to wait so long for the next prescheduled ZBA meeting. Mr. VanBuren added that due to his work schedule, it is difficult for him to make these meetings. CC stated that the ZBA could do a special meeting if they wanted. MT noted that the next ZBA meeting was scheduled for August 22, 2019. At that point, ZBA members discussed their availability for an earlier holding of the August ZBA meeting. MT motioned to move the August meeting from the 22<sup>nd</sup> to the 15<sup>th</sup>; seconded by SN and all approved. Mr. VanBuren asked if anything could be decided on prior to that upcoming meeting. MT replied no decision could be made until the Public Hearing.

**Request for Rehearing of Area Variance Application**

Suzanne Long for Daniel Holser

**Tax Map #159.-1-73**

Huntley Road

Averill Park, NY 12018

Lot Size: 5 acres

R – Residential Zoning District

A request for a rehearing regarding the denial of an Area Variance Application for proposed subdivision lot which exceeds the lot to width ratio of 3:1.

Suzanne Long, Wendy Hijos and Daniel Holser stepped forward. Ms. Long stated that her sister, Wendy, and she were present to support their dad on a previous filing of an Area Variance application which had issues and was denied. Ms. Long expressed that the first hearing of the request seemed to have a lot of misunderstanding and miscommunication which she had hoped to be able to clarify so things may move forward. MT stated she had spoken to Monica Ryan and understood that a Rehearing could be requested. Ms. Long replied that was exactly why they were present - to request a rehearing. MT asked Ms. Long if there was new information for the ZBA members since the time of the denial. Ms. Long responded yes, there was a lot of information. Ms. Long then asked the ZBA if she would be correct in that all ZBA members would have to vote yes for a rehearing to be heard. MT responded yes; it would need to be a unanimous decision. Ms. Long then stated if that were to happen, there are a couple of people that her father would like to have speak who were not in attendance so a rehearing could not be done until next time. MT responded that was fine. Ms. Long then stated that there is new information and no matter what, there needed to be more on what happened the first time. MT stated that the ZBA would need to know what the new information is before a decision could be made on the rehearing. She explained that as the ZBA had a complete application package at the initial meeting; thus, a request for a rehearing is done when there is new information such an environmental assessment or along those lines. CC added or if the applicants have specific information as to what the ZBA may have gotten wrong. Ms. Long responded that Mr. Holser's surveyor would be bringing additional information. She added that unfortunately no ZBA members had gone back to the area to view the land to be fully informed; thus, she did could not see how the request could have been assessed properly. She stated that they have taken pictures of the property; however did not have them available to present. She then spoke of a huge factor in that the half back of the lot is completely unusable and if not sold, Mr. Holser would land lock himself. MT responded that the ZBA members were aware of that information at the time of the initial decision. Ms. Long replied that she did not believe that the ZBA members realized how unusable/unbuildable that land is. She added that they have blown up pictures to support those statements. CC then asked that the applicant's allow MT to read the procedures for a rehearing to which Ms. Long agreed. MT then read the procedures for a rehearing: A motion for the ZBA to hold a rehearing to review any order, decision or determination of the ZBA not previously reheard may be made by any member of the ZBA. A unanimous vote of all members of the ZBA then present is required for such rehearing to occur. MT added that if that motion is made, it would need to be seconded and then the vote would need to be unanimous. SN motioned for the rehearing. CC stated that ZBA members should first ask what the basis are for the rehearing request. CC then explained to the applicants that if their plan was to have any additional information/people attend who were not currently available, then it would be the applicant's choice to wait until such time as all information/people were present. MT agreed and added that there had not been new documentation presented for which the ZBA was not previously aware of. Ms. Long replied that it was only because they did not know if they would receive the rehearing. MT explained that the decision to hold a rehearing is based on new information that is presented. Ms. Long replied that she understood and added that the pictures to be shared at a future meeting would show the land in the back. Mr. Holser then stated that they would be appealing the decision. He further stated that he believed Mr. Wager was the officer who made the decision for appealing it. MT then asked SN if he made the motion to rehear. SN replied yes and MT then asked if there was a second. Geraldine Burger (GB) then stated that

she was confused as she had thought that CC was advising the applicants. CC responded that he was just explaining the procedure. SN then stated that he thought there was some confusion in that the people who were to be present on behalf of the applicant; such as the surveyor, should also be present for his motion so information presented can be heard by all. Mr. Holser asked who the other people would be. Ms. Long replied that the surveyor would attend next time. Mr. Holser replied "I'm not bringing anybody we will do it ourselves". Ms. Long then explained to Mr. Holser that the ZBA needed to know of the extra information, not previously shared, to support a future rehearing request. Mr. Holser then held up a copy of the Division of Local Government Services for New York State, Zoning Board of Appeals Guide by James A. Coon, Local Government Technician Series. Mr. Holser indicated that the guide included all statutory changes through the "05" legislation session. He added that is where he was getting all of his information and that he would have a solid appeal. MT stated there was a motion to rehear and asked if there was a second. SB seconded the motion to rehear. MT then stated a poll vote would be done. JB and MT voted no. MT asked GB for her vote. GB asked the applicants if they understood that if the ZBA were to say no to a rehearing, then they would not be able to present. Ms. Long replied that she understood and added that she would be confused as to why anyone would say no. MT replied that once all ZBA members had voted, she would explain the reason. At that point, GB stated that she abstained and SB voted yes. MT advised the applicants that the motion did not pass. She explained that the ZBA initially had a very substantial hearing with long discussions and substantial deliberations amongst all the ZBA members, a lot of questions and answers as well as a visit to the site. She reiterated that for a rehearing the ZBA typically needed new information on the parcel of land or the application that they do not know of or have at the initial meeting. She added that the applicants did not come to the meeting and present any new information on the parcel of land or application for which the ZBA members were not already aware of previously. Ms. Long replied that there was new information and mentioned a topographical map and while it was not present, they did have it. She also stated that she had video footage and pictures. MT replied that some members may have already looked at it previously and reiterated that it should have been presented to convince them that it was new information. Ms. Long asked MT if she was on a four-wheeler when she visited or if she walked the site. MT replied that she had walked the site and was not on a four-wheeler. Ms. Long replied that MT could not have gone in the back of the land. MT replied that she had gone around the backside. Ms. Long realized the direction the meeting was headed and asked to clear things up. She stated that what has happened to her father should not have absolutely happened to him. She then spoke of the piece of property that had been approved the first time and stated that the parcel under discussion is the same exact thing. She further stated that the first parcel approved had nothing in the paperwork to say there was a variance; thus, her father continued the same process and was denied. Ms. Long added not only was he denied, there was 33 mailings. At that point, she paused and expressed a concern stating she felt that the ZBA members were getting frustrated with her and asked them to please hear her out. She restated that there were 33 mailings from the Town to people in the surrounding area which had announced the Public Hearing. Ms. Long then added that it was stated in the denial that the ZBA members listened to the public's reasons which became a part of the denial. She referred to the Public Hearing in which a neighbor indicated that they were unaware that Mr. Holser sold them a non-conforming lot and questioned how that could be a reason for denial. She added that her father was also unaware of that lot being nonconforming. Ms. Long then mentioned the public comment regarding

additional traffic on the road and stated who wouldn't like to have five acres of land with hardly any traffic but that would not be reality. Ms. Long then stated that as her father has lived in the area for years and paid taxes on the property, he should have the right to sell the land. She further added that while there was a platform for public comments, her father had been turned down due to the public's comments. She stated she did not see any validity in the public comments and that her father has not done anything wrong. Wendy Hijos then referred to the Public Hearing and stated that Karen DeFazio, who had spoken at that meeting, was her former sister-in-law. She added that the parcel of land that her father sold to Ms. DeFazio was her former mother-in-law. Ms. Hijos then shared that she had divorced Ms. DeFazio's son and asked if there was a need to go any further. Ms. Hijos then spoke of the NYS Troopers who were present at the previous meeting and indicated that they were a law abiding family who treated people right; yet the situation that night had turned into a fiasco. She expressed that she believed her father was treated unfairly at the initial meeting. Mr. Holser then stated that he disagreed with the Area Variance completely. He added that he had subdivided land and sold it with no guarantees and done as a buyer beware with the new owner responsible for the septic system and water supply on the site. Mr. Holser stated that he was responsible to ensure there was road access to the property and it was up to the buyer on whether he wanted the lot or needed to go to the ZBA or Planning Board for appropriate approvals. He added that all he was doing was selling lots as he had done in the past in Sand Lake as well as surrounding areas. He then mentioned that he had called the Town's Building Inspector who had not returned his call. Mr. Holser closed by stating that the situation was long from over. MT replied that she understood and advised that the vote stood for which Mr. Holser replied "thank you".

**MEETING MINUTES** – May 16, 2019 and June 6, 2019 – SN motioned to accept the minutes as submitted. Seconded by JB and all approved.

**ADJOURNMENT** – MT motioned to close the meeting at 7:38 PM, seconded by SB and all approved to close the meeting.