

**Town of Sand Lake  
Zoning Board of Appeals (ZBA)  
July 9, 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: Pat Simon, Ann Bower, Ethan, Sierra Thibeault, Frederick Nick, Kevin McGrath, Scott Morrissey, William Keniry, Bonnie Jo Willard, Monica Ryan (Town Planner)

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

**Area Variance Application & Public Hearing**

Morrissey Contracting LLC

89 Gundrum Point Road

Averill Park, NY 12018

R – Residential Zoning District

**Tax Map #169.2-1-34**

Lot Size: 6,609 sq. ft.

An Area Variance Application to replace an existing residential dwelling with a new larger home that will exceed the required setbacks and impervious surface coverage.

Melissa Toni (MT) explained the Area Variance Public Hearing process. Scott Morrissey of Morrissey Contracting was present to represent the application and summarized the project previously discussed at the June 18<sup>th</sup> Zoning Board of Appeal (ZBA) meeting. MT stated that the required front yard setback was 50' and the request was for 30'2"; the required side yard setback was 20' and the request was 5'2"; and, the required impervious surface was 30% and this lot was going down to 41%. She noted that one side of the existing dwelling had a setback of 16'4" and that would be reduced to 5'2". MT opened the Public Hearing at 7:11pm; seconded by Geraldine Berger (GB) and all approved. Scott Bendett (SB) read the two public comments submitted in writing by Ruth Goerold and Joe Johnson (attached). With no other public comments, MT closed the Public Hearing at 7:17pm; seconded by Wayne Gendron (WG) and all approved. MT explained that the project also required the Planning Board's (PB) approval of a Scenic Preservation Review Application. She added that a Recommendation from the PB could be requested in one of two ways: 1) the ZBA takes no action and asks the PB for a Recommendation; or, 2) the ZBA approves the Area Variance with a condition that the PB concurred. SB asked Monica Ryan how a survey done by the neighbor, Ruth Goerold, may or may not affect the ZBA decision. Ms. Ryan replied that in regards to the comment made by Ms. Goerold regarding the pathway and stairs to her camp, those items appeared to be on the neighbor's property. She added that it was not unusual for lake properties to have a discrepancy

between the survey lines and the tax maps. She then stated that any Area Variances allowed and approved by the ZBA would be measured from the agreed upon property line to the setback. Ms. Ryan added that if the proposed house did not meet that approved setback, then the house would need to be reduced. Craig Crist (CC) agreed with Ms. Ryan and added that the ZBA does not determine or change property boundaries based on decisions and any such information that is submitted is taken at face value and would be the property owner's responsibility. MT stated that the setback request from 16'4" down to 5' was small; she stated that the impervious surface requirement was difficult to achieve on a small lot. She commented that past approvals had been only 10-30% and the requested Area Variances fell more into 40%. WG commented he had done a site visit and noted an accessory building at 95 Gundrum Point Road was approximately 5' to 8' off the property line and that trees were right on the property line. He added that the proposed house would encroach on the property line however would still be setback further than the accessory building on 95 Gundrum Point Road. WG then stated that the existing space at the end of the driveway was unusable thus agreed with the use of concrete as well as the pulling back of the driveway to allow for ease of access. He stated that with regard to the requested setbacks, he did not view them as different than those at 87 Gundrum Point Road. WG added that he viewed the move of the house away from the lake as a positive and did not see any negative impact to the neighbors. MT agreed that the proposed project would be an improvement and added that the lots were very small and difficult to work with. MT then asked Mr. Morrissey if a smaller garage width had been considered. Mr. Morrissey replied that his parents were aging and wanted the room for the opening of cars doors; thus, preferred not to shrink it. He added that the proposed size would work well for his parents as well as the width of the lot and driveway. WG asked what the current width of the driveway was for which Mr. Morrissey replied 23-24' wide at the yard and it expanded out nearly the whole width of the lot at the roadside. Ms. Ryan summarized a meeting she had with the neighbor at 93 Gundrum Point Road. She stated that they were more concerned about their ability to rebuild in the future due to the nature of the lot and need to utilize the narrower section as well. Mr. Morrissey replied that there were many similar situations with houses along the lake in regards to side yard setbacks. WG stated that information seemed to support the Area Variance requests being sought for Mr. Morrissey as well as new ones that may be requested in the future. GB asked where the propane tanks would be located. Mr. Morrissey replied that there would be two 200-gallon above ground propane tanks utilized and placed up against the side of the building in one of the nooks where the house widened from the garage. He added that he had spoken with the Goerold's about the project. Ms. Ryan stated that she believes there's a code that requires propane tanks to have a 10' separation from a property line and house. GB noted that the side yard distance of 5'3" was up closer to the road and then asked how much room did the nook provide for the propane tanks. Mr. Morrissey replied it would be 2' on the one side. WG asked if oil could be used for heating and located inside the home. Mr. Morrissey replied that would need to be discussed with his parents however did not see the type of heating to be utilized as an issue for them in regards to holding up the project. GB replied that if the garage were to be reduced by a few feet, it would allow more room. GB asked about setbacks required for the above ground propane tanks. Ms. Ryan replied that information received from Michael Wager of the Building Department regarding parameters/requirements stated that above ground propane tanks between 125 & 500 gallons have a 10' setback from the property line and 10' from the house. MT asked if those parameters could be met. Mr. Morrissey replied yes and another heating method could be utilized, if needed, to achieve the goal. MT commented that she felt the 5' on either side was narrow and would be a substantial area variance to approve. Amy Lent (AL) stated that a drive by the site revealed it would be really crowded. She asked if the 5' was granted, would it set precedence for others in the area to do the same. MT replied that it would absolutely set precedence. Mr. Morrissey commented that there had been at least three other locations where the small setback had been granted on that road. SB asked if it was known how long ago those area variances had been granted. Mr. Morrissey replied he did not know and added that those houses were modern and thought might have been done within the last 15 years. SB commented that he had done a drive by as well and that both AL and WG were right in that it was a crowded area; however, the proposed project would fit in with the character of the

neighborhood for the small lots. SB asked if an agreement could be made with the neighbors at 93 Gundrum Point Road. Mr. Morrissey replied that they had a few meetings with them to go over the plan and each time they indicated that they supported the project. He added that he had also spoke with surveyor Kevin McGrath who was able to locate the property pins. SB asked if the drainage would be reviewed and done correctly. Mr. Morrissey replied yes and added the west side of the property had several concrete catch basins with large diameter culverts that would likely be utilized for the storm water management. MT asked if they went to the lake. Mr. Morrissey replied no, it was his understanding that those went across the road. MT asked if the square footage of 1,600 was correct. Mr. Morrissey replied yes. MT noted that if the house were reduced by 8' on each side, a large amount of square footage would be lost. Mr. Morrissey agreed and added that the proposed house was moved away from the current location on the west side. GB asked about a reduction of the proposed 28' wide garage to allow for more room on the one side. WG asked the size of the proposed garage doors. Mr. Morrissey replied it would either be a single 16' or two 9' separated in the middle. WG commented that he viewed a 24' wide garage as feasible for a two-car garage. Mr. Morrissey replied that he seen the points made by GB and WG and believed there would be some room to work within that width. MT asked if the 2' could be given to each side with reduction of the garage width to 24'. Mr. Morrissey replied that it could be done for the east side but preferred to keep the west side as proposed. MT and WG replied that they were both comfortable with giving 2 additional feet to the east side. A discussion ensued regarding the Recommendation from the PB being sought and decided that as the request for Recommendation had been an oversight at the previous ZBA meeting, it would not be done so as not to hold up the applicant. CC read the NYS Town Law 267-B 3 on the criteria to be considered by the ZBA to determine whether or not to grant an Area Variance(s).

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 noted that a good compromise had been reached and provided the agreed upon changes for the proposed garage to be 26' in width versus 28' increasing the side yard setback to 7'3" versus the proposed 5'3" setback from the adjoining property line of 93 Gundrum Point Road.
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 believed the ZBA members had exhausted the possibility of the project be accomplished in another manner.
3. *Whether the requested area variance is substantial.*  
MT noted that 40% is needed for the front yard (road side) setback which was determined, under the circumstances, it finds borderline however not substantial.
4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.*  
MT noted that any effects seemed to be minimized by some stormwater management. It was also noted that the pulling back of the structure from the water would be a positive outcome.
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 a majority of the alleged difficulties were self-created including this one by the purchase of the property.

AL asked to discuss the proposed concrete driveway in relation to the impervious surface. Mr. Morrisey explained that it would be a snow melting concrete driveway with tubing that pitch to the center to a drain and then divert into a catch basin.

WG made a motion to declare the activities proposed in the Area Variance Application as a Type 2 action under SEQR, declaring the Town of Sand Lake ZBA as Lead Agency; seconded by GB and all approved. WG motioned to approve the application as submitted with the following condition: the proposed garage size shall be no greater than 26 feet in width with a side yard setback of at least 7 feet three inches (7'3") from the adjoining property line of 93 Gundrum Point Road. The motion was seconded by MT and all approved. CC added that the ZBA approval did not obviate the need for all other necessary approvals and permits needed to complete the project.

**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

**Tax Map#158.4-2-3**

Lot Size: .425 +/-acres  
Proposed Lot Size: .075 acres

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

MT noted that the ZBA had sought a Recommendation from the PB and no action had been taken. Ms. Ryan explained that the PB had a concern on the interior side setback line between the two properties as it would only be 2+ feet on Lot 24, 25, 26 side in order to place all of the driveway on Lot 23 onto its own parcel. She added that PB members had decided that a site visit was necessary prior to providing a Recommendation. CC stated that the adjustment/delay of timeframe was discussed at the PB meeting for which Attorney William Keniry was very cooperative. Attorney William Keniry was present and stated he represented Bonnie Jo Willard who was the executrix of the Michael F. Lomonoco, Jr. estate. Mr. Keniry explained that Ms. Willard had informed him that two PB members had visited the site and indicated to her they would be opposed to the movement of the line for the purpose of the driveway. He further stated that Ms. Willard informed him that she was fine with the property line remaining as is in order to move the process along. Mr. Keniry agreed with ZBA members and CC to hold the Public Hearing without the Recommendation from the PB due to the cost of the hearing notice having been published. It was also agreed by the same parties that the Public Hearing remain opened for written comment until August 23 to allow time for the PB Recommendation to be received. MT then motioned to open the Public Hearing at 8:16pm; seconded by WG and all approved.

With no online comments from the public, MT motioned to leave the Public Hearing open for public comments through the ZBA meeting on August 13, 2020; seconded by WG and all approved. Mr. Keniry asked if the ZBA members had any further questions or comments. WG commented that he agreed with the PB on leaving the property line as is; otherwise there would not be room for 64 Loon Creek Lane to do maintenance on that side of the house. MT agreed with WG in that a movement of the boundary line would make it very tight.

**Area Variance Applications (2) – Public Hearing**

Frederick Nick  
21 Knob Hill Road  
Averill Park, NY 12018  
R – Residential Zoning District

**Tax Map#138.04-3-8.1**

Lot Size: .296 +/-acres

An Area Variance Application to create an undersized lot as part of a two-lot subdivision.

MT summarized the application and stated that a positive Recommendation was received from the PB with no conditions. Frederick Nick was present and stated that since the time he had purchase the property, both lots which were separated by Knob Hill Road, had been on the same tax bill. He further stated that he now needed them to be subdivided as the properties were being sold. Surveyor Kevin McGrath was also present and added that Mr. Nick had purchased the property in 1983 and for whatever reason there is only one parcel id number for two separate lots. He explained that during this time there existed two separate buildings separated by a Town maintained road and each lot had a street number – the smaller lot being #21 and the lot across the road was #26. Mr. McGrath then stated that Lot 1 (21 Knob Hill Road) required three area variances: 1) deficient lot width as 150” is required for road frontage and 100’ is proposed; 2) deficient front yard setback as 50’ is required and proposed would be 31’4” ; and, 3) deficient lot size as one-acre is required and proposed would be .296 acre. He then stated that Lot 2 (26 Knob Hill Road) required one area variance for deficient lot size as one-acre is required and it is proposed would be .692 acre. He then stated that should the Area Variances be approved by the ZBA, they would then go back to the PB for approval of the Minor Subdivision for two lots.

MT then motioned open the Public Hearing at 8:26pm; seconded by GB and all approved. With no written or online comments from the Public, MT motioned to close the Public Hearing at 8:27pm; seconded by GB and all approved. CC read the NYS Town Law 267-B 3 on the criteria to be considered by the ZBA to determine whether or not to grant an Area Variance(s).

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 stated that approval of the Area Variances would not impact the existing character of the neighborhood as the dwellings and all of the infrastructures were already in place.

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 there was not another way for the desired outcome to be accomplished and added that the Town Road ran through the middle of the properties.

3. *Whether the requested area variance is substantial.*

MT noted that the majority of the needed Area Variances were not substantial.

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

MT stated that there would not be any physical or environmental adverse effects.

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 the difficulty was not self-created as the situation had been created years ago prior to the current owner acquisition.

ZBA members agreed with MT and GB stated that the Area Variances should be approved as presented.

MT motioned to declare the Town of Sand Lake Zoning Board of Appeals as the Lead Agency for the two Area Variance Applications; seconded by AL and all approved. MT motioned to classify the two Area Variances as a Type 2 under SEQ; seconded by GB and all approved. MT motioned to approve the Area Variance for Lot 1 (21 Knob Hill Road) for the following: 1) deficient lot size of .296-acre; 2) deficient lot width of 100’; and, 3) deficient front yard setback of 31.4’. The motion was seconded by GB and unanimously carried. MT motioned to approve the Area Variance Application for Lot 2 (26 Knob Hill Road) for the creation of a deficient lot size of .692-acre. The motion was seconded by GB and unanimously carried.

**Area Variance Application**

Ann Bower  
26 Stone Camp Way  
Averill Park, NY 12018  
R – Residential Zoning District

**Tax Map #170.2-1-3**

Lot Size: 3.81 acres

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.

MT went over the Area Variance process and 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 stated the need for the Area Variance was due to the zoning Code requirement of 50' for the rear yard setback and the proposed project was 32'. WG asked if the footings would be changed. Contractor Ethan replied that it was currently on 8" piers however would be beefed up to 12" piers to support the roof load. WG asked if there would be a gabled end just on the screen room. Ethan replied yes and would come up only along the lower/bottom part of the window. Ethan added that new siding would be pieced in to match the other side. WG asked about the roof and the applicant replied that it will be done to match the shingled roof of the house. MT asked if the trees would remain for which the applicant replied yes, all trees would stay. Ethan explained that it would be 2x8 framing and the posts would extend up through to the beams which would consist of a ridge beam and two side beams. WG asked if it would be an open interior with the connecting boards exposed for which Ethan replied yes. MT asked if neighbors could be seen on either side. Ms. Bower replied not now and added that they would have a new neighbor. She explained that they have a right of way and a hedge existed. Ms. Bower added that the house could not be seen on Google maps due to the large number of trees. SB and WG agreed and added that the project did not appear to be a detriment to the neighbors and would improve the living space for more enjoyment. With no further questions, GB motioned to schedule the Public Hearing for August 13, 2020; seconded by WG and all approved.

**Area Variance Application**

Sierra Thibeault (applicant)  
Catherine Headley (property owner)  
124 Garner Road  
Averill Park, NY 12018  
R – Residential Zoning District

**Tax Map #158.-2-15.1**

Lot Size: 0.42 acres

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. Sierra Thibeault explained that the Area Variance was being sought to allow an accessory dwelling to remain where it was in the front side yard of her mother's property. She added that the current location allowed for easy access to the dwelling and was 10' away from the primary structure as well as the neighbor's property line and 52' away from the road. MT asked Monica Ryan to explain the Area Variance(s) needed. Ms. Ryan explained that the principal structure was Ms. Headley's house and the accessory dwelling unit was located in the front yard which the Zoning code does not allow. Ms. Ryan added that the accessory dwelling unit was 52' from the road per a measurement done by Building Inspector Michael Wager. Ms. Headley pointed out that there were several RVs in the front yard on nearby roads. She stated that the accessory dwelling unit (tiny home) was similar to an RV as it was on wheels and temporary and asked what was the difference. Ms. Ryan replied that if the tiny home was to be defined as an RV; the Zoning

Code, since 1972, does not allow for them to be in the front yard either. She added that RVs were also not allowed to be lived in for more than 30 consecutive days in a 12-month period; thus, there would be other implications/restrictions if considered as such nor would it fit the situation. She added that if the applicant wished to go in that direction, then a conversation would need to be had with the Code Enforcement Officer as it would be a whole different procedure. Ms. Ryan further explained that while accessory dwelling units such as the tiny home were allowed, it would also need a Special Use Permit approved by the Planning Board (PB) as well as a Building Permit; however, the issue of location needed to be addressed first. MT went on to say that accessory structures were not allowed in the front yard at all and explained that the Area Variance sought would be considered 100% in the front yard. MT asked if there was room in the back. Ms. Headley replied that there was some room to tuck it behind however pointed out that there was runoff from the neighbor's house on the left that ran toward her house and where the tiny house was currently located. She explained that the roof on the older part of the primary structure was not steeped pitched and the snow load poured off of it which was the reason the tiny home was not placed in that location. Ms. Headley then explained that the while the other side had a flat spot, it consisted of a leach field for the septic tank which would be a concern. She added that the neighbor on that side would not appreciate the tiny house located right by their entertaining area. Ms. Headley also stated that the tiny home was being looked at as a temporary situation until land could be bought to place the tiny home on and then build a home. GB commented that she had thought a good decision had been made on the placement of the tiny home as they had considered the neighbor and neighborhood. She added that the trees created a barrier so it was not really seen from Garner Road; thus, did not see it as a problem. Ms. Headley commented that SB had done a site visit that day and Ms. Thibeault informed him that many folks in the area loved the tiny home and stopped by to comment and tour it. She further stated that Ms. Thibeault was able to speak to seven folks in the neighborhood who informed her they were supportive of location of the tiny home. Ms. Headley also stated that there were another three folks in Pond Hollow who were spoken to and also in favor of it – she added that they had signatures from all those folks. SB asked Ms. Ryan and CC if there was any NYS guidance on tiny homes. Ms. Ryan replied that Uniform Building Code regulations were expected to be issued back in the spring however had not come out yet. She added that from a Zoning Code perspective, it was to be viewed as an accessory structure and there was not a minimum square footage for a home in Sand Lake. She reiterated that the issue was the location versus it being an accessory dwelling. WG and MT agreed that the application was complete in order to move forward with a Public Hearing. WG motioned to schedule the Public Hearing for August 13 at 7pm; seconded by GB and all approved. MT commented that it has been her experience on the ZBA that a 100% Area Variance for an accessory structure in the front yard had not issued. She asked ZBA members to keep in mind such things as: site specifics of area, differences in accessory structures as well as other options.

AL commented that in viewing the area on Google map, the structure seemed to be in the side yard and added that it was proposed to be temporary. Ms. Ryan replied that a conditioned approval could be done for a certain amount of time as that was part of the Zoning Code for a Special Use Permit. She explained that information would then be shared with the PB as part of the ZBA Area Variance approval and then carried forward if the Special Use Permit were to be approved.

**ADJOURNMENT** – MT motioned to close the meeting at 9:04pm; seconded by WG and all approved.