Town of Sand Lake
Zoning Board of Appeals (ZBA)
June 10, 2021

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 7:02 PM

MEMBERS PRESENT: Geraldine Burger
Scott Bendett
Amy Lent
Wayne Gendron
Craig Crist, Esq.
Christopher Langlois, Esq – Special Counsel

MEMBERS ABSENT:

OTHERS PRESENT: Moira & Andrew Bulmer, Sarah Campbell, Esq., Riley Bulmer, Libby Bulmer, Ann Bower, Pat Simon, Scott A. Blair, Linda Kramarchyk, Jim McDermott, Annemarie McDermott, Susan Djernes, Chris Djernes, Thane Reilly, Pat Carroll, Doug Carroll, Charles Zipprich, Michael Paris, Jonathon Tingley, Esq., Melissa & Joseph Jankovic, Ben Neidl, Esq., William Burdick, Paula DeCola, Matthew Griffin, Monica Ryan (Town Planner)

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

Area Variance Application and Public Hearing

William Burdick (applicant/property owner) **Tax Map # 147.1-4-24 & 147.1-4-24.5**
Udderly Ice Cream, LLC
3579 Route 43, West Sand Lake, NY 12196 Lot Size: 3 acres
HMU – Hamlet Mixed Use Zoning District

An area variance application for additional business signage.

Melissa Toni (MT) explained the Area Variance and Public Hearing process. William Burdick presented and summarized the project which had been initially presented at the May 13, 2021 Zoning Board of Appeals (ZBA) meeting. Ms. Ryan pointed out that the Zoning Code allowed two signs per property and currently three signs existed. She explained that the square footage amount of signage allowed per property was driven by the linear frontage of the building's façade. She added that Mr. Burdick was seeking area variances for a total of 3 signs and exceeding the allowed square footage of signage. MT stated that the applicant wished to have three signs to consist of one freestanding and one on each side of the building to capture the line of site for traffic on Route 43. Mr. Burdick agreed with MT. With no questions from the Board, MT motioned to open the Public Hearing at 7:07 pm; seconded by Scott Bendett (SB) and all approved. With no public comments received, MT motioned to close the Public Hearing at 7:08pm; seconded by SB and all approved. SB motioned to classify the project as a Type 2 action under SEQR and identified the Town of Sand Lake ZBA as Lead Agency; seconded by MT and all approved.

Craig Crist (CC) read the criteria that ZBA members considered upon making the determination for this Area Variance Application.

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.*
   Wayne Gendron (WG) stated he did not have any issues. Amy Lent (AL) and MT agreed, and MT added that the request would fit in with the hamlet. Board members agreed it would not cause a detriment or undesirable change to the character of the neighborhood.
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 noted that based on the size of the building, there was not another alternative to achieve the desired outcome. Board members agreed.
3. *Whether the requested area variance is substantial.*
   MT stated that the square footage would not be significantly exceeded nor would the addition of one sign be substantial. Board 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.*
   MT stated that she did not believe this to be the case with signage just placed on a building. Board members agreed with the statement made by MT.
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, as with many of the requests before the ZBA, the difficulty was self-created.

MT motioned to approve the area variances as submitted; seconded by Geraldine Burger (GB) and all approved.

Area Variance Application & Public Hearing

Andrew & Moira Bulmer (Applicant)
24 Stone Camp Way
Averill Park, NY
R-Residential Zoning District

Tax Map #: 170.2-1-4
Lot Size: 1.84 acres

An area variance application regarding insufficient front and side yard setbacks.

Andrew Bulmer and attorney Sarah Campbell were present. MT noted that the Bulmer's had been before the ZBA previously for Area Variances on this parcel. Ms. Campbell stated that she represented the Bulmer's and agreed with MT's statement. Ms. Campbell summarized the latest project which had been initially presented at the May 13, 2021 ZBA meeting. Mr. Bulmer had handed out a survey which reflected the proposed home onto the site and Ms. Campbell stated that there were three variances being sought: 1) a side yard setback for the north property line; 2) a front yard setback on the roadside; and 3) a side yard setback for the south. Ms. Campbell further stated that the Planning Board (PB), at their meeting of June 2, 2021, were disinclined to make a recommendation that involved anything other than the error of the foundation. She explained that originally the applicant proposed some bump-out windows in one location and the PB was not happy with that request. She went on to state that Mr. Bulmer, at that PB meeting, indicated the proposed bump-out windows could be removed and added that the drawing reflected them as removed; thus, the impact on that property line only involved the roof overhang. She further explained that the dimensions were shown and added that it was not a straight perpendicular line and relief ranged from 6.4' to 12.3'. She went onto explain that for the front yard setback the relief was for 14.8' and for the final relief on the south side yard setback, the applicant requested a relief of 21.3'

versus the required 30' to allow for a proposed screened porch versus an open deck. She stated that the Bulmer's had not gained anything from the error, nor had they made their house bigger.

Regarding the variance criteria on whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties – Ms. Campbell stated that the impact on the north side property line, the front corner of the proposed Bulmer home with the proposed 12.13' setback would be behind the neighbor's home; thus, no visual impact associated with that location. She added that was also a tree line and that the Bulmer's had agreed to do additional landscaping to further mitigate any impact on that property line. She stated she understood those neighbors were concerned about their inability to possibly build closer to that property line if the relief was granted and pointed out that the sewer was located there; thus, would be impossible for them to do so. She acknowledged that the neighbors to the north would be impacted, however they were seasonal residents, and this would be a full-time home for the Bulmers. She concluded that they would submit a response to the cited criteria as negligible.

Regarding the variance criteria on whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance – Ms. Campbell stated that the foundation could be moved however that cost would be over $75,000 and an extreme hardship for the Bulmers to do so. She further stated that the impact of the requested reliefs, given the previously granted variances, were relatively minor.

Regarding the variance criteria on whether the requested area variance is substantial – Ms. Campbell stated she would not answer that one as that would be for the ZBA to decide. She added that for the south property line relief being requested – she submitted that would be a relatively minor variance to allow for the screened in porch. She further added that for the front yard setback – she submitted that at 14.8' there was not any impact to anyone as it was maintained by individuals via snowblowers and would not impede anyone's access yet provide a handicapped covered access to the home.

Regarding the variance criteria on whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district – Ms. Campbell stated that in relation to drainage, traffic, dust and odor, the variances being requested would not impact them. She added that to the extent that there was an aesthetic impact that had been addressed previously for the neighbor on the north with the proposed landscaping.

Regarding the variance criteria on whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district – Ms. Campbell stated that, as previously indicated by the ZBA Chairperson, they are always self-created and added that the Bulmer's acknowledged that they owned the responsibility for the foundation that had been inappropriate poured.

CC stated that he wanted to make it clear that Andrew Bulmer was a Town Board member.

MT clarified the variances being requested and noted the north side was 3' and asked it was being amended to 6.4' to which Ms. Campbell replied it was. WG clarified that it would be 5.2' with the roof overhang to which Ms. Campbell agreed. It was noted that the north side was originally granted a variance for 10.7'. MT then stated that the relief being sought for the roadside was now 6.1' versus the 14.8' from the property boundary line to which Ms. Campbell agreed. MT noted for the south side that no variance was previously requested, and a variance was now being sought for a setback of 11.9'.

With no further questions from Board members, MT motioned to open the Public Hearing at 7:28 pm; seconded by WG and all approved.

CC read, in part, the correspondence submitted by Jonathon Tingley, Esq who represented Pat Simons and Anne Bower – the owners and occupants of 26 Stone Camp Way. Mr. Tingley's letter asked the ZBA to take the following action: 1) Deny the current requested area variances and 2) Hold a rehearing to review, reconsider and reverse the ZBA's prior determination on the original variances sought by Mr. Bulmer for 24 Stone Camp Way. CC noted that the letter further stated that the applicant's position as Town Councilman should be publicly disclosed in writing and made part of the official record of proceedings of the ZBA on this matter. He further noted that the letter stated that Mr. Bulmer was a current Town Councilman and served in that position since elected in 2017 - Mr. Tingley's letter stated he observed several meetings of the ZBA and PB in which the application had been discussed and had not heard any mention, to date, by any member of Mr. Bulmer's team, Board member or Town staff that publicly disclosed or acknowledged Mr. Bulmer's position as Town Councilman. Additionally, CC read from Mr. Tingley's letter that FOIL requests had been submitted in which the response reflected continual changes in the application materials and the response did not, in writing, disclose Mr. Bulmer as Town Councilman. CC read that Mr. Tingley's letter stated that Mr. Bulmer had an obligation to disclose his position and interest in writing and that it be made a part of the official record of the proceedings of the ZBA and cited General Municipal Law Section 803. CC read that Mr. Tingley's letter stated that Mr. Bulmer as Town Councilman was responsible for knowing and following the Town's rules and given his position as Town Councilman serve as an example to all others in Town and his conducts should be a model of compliance that is beyond reproach. CC read that the letter stated it was important for the ZBA to recognize Mr. Bulmer's position as Town Councilman and for the public to know that the applicant seeking the extraordinary relief on the application is a Town Councilman. CC read that the letter went onto say that an official record on this matter must include a written disclosure that the applicant, Mr. Bulmer, is a Town Councilman so that in a potential later Article 78 proceeding, a reviewing court is aware of Mr. Bulmer's status and the possible impact it may have on the Board's decision-making. CC noted that the letter also stated that the disclosure of his position was critically important particularly in the application file which he seeks permission to continue building in violation of both the Town Zoning Law and the variances previously granted. CC concluded by stating that he would leave the rest up to Mr. Tingley to cover during the public comment period however wanted to cover the various factors of the Town Law, Section 267-b.

CC then asked Mr. Bulmer if it was correct that he was a current member of the Town Council to which Mr. Bulmer replied yes. CC then asked Ms. Campbell if she wished to add anything to which she replied she certainly did not think it was a secret and everyone knew Mr. Bulmer was a member of the Town Council. She then stated that it can now be assumed for the record that it is a part of the record that Mr. Bulmer is a part of the Town Board.

Mr. Tingley handed out to the Board members hard copies of the correspondence he submitted earlier that evening, via email. He stated that his clients (Ann Bower and Pat Simons) were the most affected neighbors regarding the variance being sought by the applicant on their side. Mr. Tingley then stated that he noticed throughout the process, that the application has been a constant shell game with never seeing the actual application until the night of the meeting as it constantly changed – he noted that the application had changed again during this meeting. Mr. Tingley pointed out from his letter that the window bump-outs lead to the 3' setback being requested next to his clients' property. He explained that while the Public Hearing was an opportunity for the neighbors to be heard; the applicant, once again just before the meeting, changed their application in a way that made his letter less relevant; thus, deprived them of the opportunity to be heard and as such found it to be a little unfair. He continued to note that it was unfair that a property owner who knew the rule and charged with knowing the rules because of being a Town Board member is granted area variances and then proceeded to build in violation of the granted variances and returns to the ZBA to ask for forgiveness. Mr. Tingley noted that the applicant

claimed that the mistake was a consequence of revolving door of contractors, however not one of those contractors had come before the ZBA to speak on behalf the Bulmer's and acknowledge that was the reason for the requested variance. He added that the applicants had not only violated the Zoning law but also the variances that they had been previously granted and now asked to be able to continue the violation – asking for formal approval to allow a Town Board member to continue to violate the Zoning law and variances previously sought and granted then built in violation of it. Mr. Tingley stated it was discerning to him and his client that a Town Board member engaged in this conduct. He explained that he was not suggesting that the ZBA would necessarily grant further variance because the applicant was a Town Board member however wanted the Board to understand their perspective in that it was the first thing that came to mind. He added that it would impact the confidence in government should the applicant be allowed to continue to violate the variances originally sought.

Mr. Tingley then spoke on the criteria for considering area variances. He began by stating that the latest request of 5.2' from his client's property line was substantial by any measure as the applicant was required to build at 20' or further away. Mr. Tingley stated that the substantiality should not be measured based on the variance originally granted but rather the actual Zoning law requirement. Mr. Tingley further added that to do so otherwise would result in other applicants seeking variances and then returning for other variances beyond what was initially sought. He stated that the 5' side yard setback versus the required 20' would result in a 75% variance. He further stated that for the front yard setback, the latest request would result in an 88% variance as it would be from the required 50' down to 6'. He then proceeded to utilize a measuring tape to visually reflect the 5', without the bump-outs, that was being requested from the client's property line and then laid out 6' to reflect the distance from the road. Mr. Tingley stated while there was vegetation between the properties, it was not a buffer. He further stated that he did not believe that adding vegetation would work. He explained that with the grade going down from the road to the lake, the foundation would be somewhat elevated with a proposed walkout basement and a 12' deck above on the lake side of structure which would overlook his client's screened-in porch. He added that he visited his client's property and sat in their screened-in porch to envision the Bulmer's proposed deck and noted there would not be any privacy given the elevation with a deck at the back of the house. He stated that it had been noted that there would not be an impact in relation to the neighbors view of the lake as it would not be blocked, however there would be a privacy impact in addition to the structure being very imposing once built especially given the way the foundation had been laid out. Mr. Tingley added that he believed there were impacts to the neighborhood and, in particular, to his client's property as well as a possible danger to the public's confidence in government if the latest variance requests were to be granted.

Mr. Tingley then referred to the cost mentioned to move the foundation. He stated that this was not a situation of an innocent self-created hardship such as someone who bought property like a substandard lot and wanted to build a home. He then stated that the applicant had 1.84-acres to build on and while he understood that variances were previously granted, he pointed out there was 1.84-acres to work with. Mr. Tingley added that up until this meeting, the applicant's plan was to build within 3' of his client's property which had an existing camp. He added that there were alternatives available, and the Board should not consider the cost of fixing the violation as contributing to whether or not that alternative is feasible or not. He further stated that the applicant was aware of the rules and should not be rewarded for violating them nor in any shape or form should his clients bare the disadvantage of that violation.

Mr. Tingley referred to his Exhibit C of his correspondence which depicted an aerial view of the neighborhood which reflected some substandard lots and variance setbacks from what is required and current zoning for the property lines. He added that he was not aware of any structures in that neighborhood that are within 3' or even 5' from the property line and felt that it was a significant factor that should be considered as it would change the neighborhood as well as set a precedent.

Mr. Tingley then talked of other options besides building at another location on the 1.84-acres and stated a smaller home could be built. He added that a 1,500 square foot home was proposed; however, that was the square footage of a single floor and as a walkout basement was proposed and most likely would be finished, it would be closer to 3,000 square feet. He then asked if the applicant needed 3,000 square feet within 5' of his client's property and replied, "certainly not". Mr. Tingley then said that the applicant could reorient the structure as it appeared a little skewed in relation to the property line. Mr. Tingley then restated the options for the proposed home which could be reoriented, built smaller or placed more in the middle of the lot. Mr. Tingley then stated that removal of the bump-outs would not mitigate the harm as it would only result in a 2' mitigation. He then stated that another alternative would be to have the contractor pay to fix the error. He added that if it were the contractor's fault then why weren't the applicant's having the contractor pay to fix it. He then stated if it were the Bulmer's fault, then they needed to pay to have it fixed whether it was a mistake or recklessness. Mr. Tingley noted that his clients had voiced their objection to the originally granted variance by the submission of a letter and having someone appear on their behalf. He added it was for those reasons that everyone knew the proximity of this structure was a sensitive issue for his clients and yet the applicant built it and used contractors that didn't adhere to the setbacks – he noted that while he was uncertain that sounded like the case to him, however he had not heard from any contractors to this point. Mr. Tingley then stated that he believed there was no justification or excuse and the last people to have to pay for it, through suffering with the proposed structure being right on top of them, were his clients.

Mr. Tingley stated that in terms of the situation being self-created, there was a memo that had been prepared by the Building Inspector/Code Enforcement Officer of the Town dated December 23, 2020 which he referred to as Exhibit H in his correspondence. He stated the memo was from Mike Wager concerning a conversation he had with the applicant when he asked him to supply the Town Building Inspector's Office with a copy of the site plan showing the new foundation location and the setbacks from all property lines. Mr. Tingley pointed out that applicant was a sitting Town Board member who was also running for other office – a public official who has higher political aspirations. Mr. Tingley referred to the memo which indicated Mr. Bulmer's replied as having spent enough money and time on the setback issue. Mr. Tingley stated that he was astonished by the response and conduct of the applicant and felt the ZBA should take that into account.

Mr. Tingley pointed out that there were cases where courts upheld denial of area variances when someone had built in a non-conforming manner, and they were made to tear it down. He shared that there was a case where someone added a second story to a home and the ZBA denied the variance - he asked everyone to imagine addressing that situation and removing it along with the cost and added that the court system upheld the denial of that variance.

Mr. Tingley stated that there was authority in the Town Law for the ZBA to rehear the prior variances. He added that he felt this was important as the Board only saw a square on a page for the initial variances requested versus viewing actual plans; thus, the Board believed they were approving a building envelope inclusive of every part of the structure that was going to be 10.7' away. He then stated that the Board later learned there was going to be a screened-in porch, wraparound deck, covered porch and bump-out windows; thus, found, at a minimum, the application to be misleading as well as confusing. He stated it was for this reason, he felt it was an appropriate basis to rehear the application by having the applicant resubmit it with the actual plans and then for the Board to decide.

Mr. Tingley concluded that the reason the applicant sought to build down by the lake when he had 1.84-acres was because he had intended to subdivide the property. He added that he was unsure if the applicant had disclosed this information to the Board prior to obtaining the previous variances. He further

added that he also believed that the ZBA had a substandard lot variance application that may have been withdrawn because of the current issue. He noted that the applicant was looking to subdivide the property however did not see where that information had been disclosed to the Board; thus, another basis for the Board to understand the actual application with a resubmission of the application and reverse the previously granted variances.

Pat Carroll stated she resided at 20 Stone Camp Way and her property bordered the applicant's property. Ms. Carroll stated that they resided here for a little of three years and when the home had been built no zoning variances were required. She acknowledged that at the June 2, 2021 PB meeting votes were made for negative recommendations, one of which was unanimous, on proposed variances for two previously granted variances. She stated that her letter had been written prior to the meeting and at that point the new variances would have been reductions of 85% however since learned that it was now at 75% and 88% of original setback requirements. She then expressed her appreciation for two Board members who had voted no on the additional variance request to reduce the setback on her border by 10' and added those board members must have felt like her in that requesting six variances on a four-sided parcel was excessive. Ms. Carroll stated that for over a year of frustration and feeling she had no voice, it was helpful to hear PB members express that neighboring property owners should not be penalized or left to burden the alleged mistakes by the contractor. She pointed out that it was her understanding that Mr. Bulmer was a Town Councilman running for County Legislature and acted as the general contractor on the build; thus, making him ultimately responsible for all mistakes. She stated that it was their observation, living next door, that Mr. Bulmer had been onsite during the two surveys completed prior to the 12/20 excavation as well as during the excavation and pouring of the foundation. She concluded that, as a point of correction, it should be noted that Pat Simon and Anne Bower owned Stone Camp Way and as such the Carroll's and Bulmer's merely had a deeded right of way. She further stated that at the June 2, 2021 PB meeting, the applicant appeared to suggest that he was allowing us, the Carrolls, a right of way on his road. She added that the applicant had not done any road maintenance coming in from Methodist Farm, nor snow blowing or plowing and frequently did not clear the area in front of his home; thus, making it quite treacherous for them. She added that he had caused significant damage to the right of way road and damage to the Carroll's driveway and garage.

Riley Bulmer stated she currently resided at 41 Saxby Way and was the oldest daughter of Andrew and Moira Bulmer. She indicated that the process had been a lot and did not quite understand it all. She asked the ZBA to look at the situation quite simply as she had done with many things – and stated that family was a big thing in most people's lives. She explained that for her parents, the home on the lake had been a dream of theirs. She stated that she had grown up on the lake and was currently 21 years old; thus, all they wanted was to build a family home on Crooked Lake. She asked the Board to look at the whole situation as mistakes happened which was a part of life and that all they wanted was to build a family home.

Pat Simon stated she resided at 26 Stone Camp Way and had been on the lake her whole life and was currently 68 years old. Ms. Simon explained that a centennial was being planned as her grandfather had bought property 99 years ago and a lot of her family remained there. She stated that it had taken awhile to convince Anne that this was a great community to move to and bought the camp to hopefully retire there; thus, it upset her to hear the Bulmer's attorney state that they did not stay that long. She explained that they spent 5-6 months at the camp and could not stay longer as there was not any heat. Ms. Simon added that they hoped to make it a year-round home and have spent a lot of time and money thus far as it had been built in 1930. Ms. Simon state that they bought the camp in 2016 and it was rundown but charming and they were drawn to the lake where she had grown up along with the spaciousness of the neighborhood. She explained that they understood someone could build on the vacant lot next to them; however, also knew that the previous cabin had only been 400 square feet with maybe a porch on it and

the entire camp had been removed a long time ago. She added that while knowing someone could build, they were aware of what the laws were regarding having to be 20' away from the neighbor and 50' away from the lake and knew any new build on that lot would need to be small as it was a small portion of land. She explained that the one thing they liked, along with all others, is their privacy which would be gone if the applicant was granted the variance as the foundation was huge. She stated that while some scraggily forsythia bushes existed, additional landscaping would not make a difference as the new home would be right on the property line. She stated that they had asked the ZBA not to allow the original area variance of 10' but rather keep it at 20' only to find out that the proposed home would now be 3' away. She stated they had a lot of support from the neighborhood and from those on the lake. She explained that one of those folks was Scott Blair who told her that he owned property similar to what the applicants had but out of courtesy to the neighbors, Mr. Blair built his house up on the hill and had a beautiful beach area and great neighbors. She stated that the Bulmers were aware that Ms. Simons and Ms. Bower were opposed to the original 10' variance yet they returned to ask for more. Ms. Simon added that it had been a nice neighborhood but now the Bulmers did not even speak with them, and she found the atmosphere to be uncomfortable. She stated she did not understand why, when the applicant received the survey, they did not change the plan seeing as Mr. Bulmer was a builder and should have known whether the house would fit or not. She then reiterated what her lawyer had said in that each time a meeting was held on the issue, the applicant's plan seemed to be different. She then referred to the June 2, 2021 PB meeting in which 30 minutes was spent by the applicant speaking to Arthur Herman about possible changes. She added that she had thought when the initial variances were granted, the applicant was supposed to build a road down and not come down the private road. Ms. Simon stated that when the initial variances were needed, she had thought the house would be made smaller however despite their objections along with two other neighbors on Stone Camp Way – noting there was only 5 houses total on that private road – the Board had given approval to build as presented which was not understood. She added that it felt as if their concerns did not matter and noted that she had spoken to other folks whose variance requests were denied due to neighbor objections. She added that she felt they had been in meetings for a year, and this is the first opportunity to speak. She concluded by stating that they had bought their camp to relax however this situation was very upsetting to them to the point where a lawyer was hired to protect their rights, so the applicant did not build on top of them. She asked the ZBA to please consider their situation.

Anne Bower stated that she lived with Pat Simons and felt relieved to finally have a voice as they previously felt completely invisible as the situation had been crazy. She stated that Stone Camp Way was a unique community as it was a little dead end country road. She stated that when they purchased the camp in 2016, they had felt welcomed and now knew everybody and helped each out whether it was collecting mail or watering plants or taking care of a neighbor in need. She went onto say when the Bulmers arrived and showed who they were by cutting down trees that weren't supposed to and covered over the stumps, maintained a dock that the Lake Association had asked the applicant to remove last year and added no trespassing signs. She stated that since the beginning the applicant dispersed debris and such things at the corner of his property line. Ms. Bower explained that last summer the applicant placed a huge log and large pile of leaf debris at the corner by their home which created a haven for bees, that she was allergic to, and that debris remained all summer. She then stated that there was now a gigantic used cement blocks across the road on his corner for them to view every day. She added that the applicant had placed cameras on the property; thus, she felt that every time she went outside, she was being watched which was not a pleasant feeling nor felt it was necessary. Ms. Bower explained that in San Francisco she was a police officer and eight years ago had retired as a sergeant and added, as such, she was expected to follow all the laws and all the rules as a public servant. She stated that Mr. Bulmer was an elected Town official, and he too was a public servant, and he too must follow the rules and the laws. She went to say that the Bulmers had admitted guilt by admitting that they had made a mistake however it cannot be fixed by making more mistakes. She added that she felt the mistakes were on purpose and

started with shoddy architectural pencil drawings which got bigger with decks and bump-outs. Ms. Bower stated that she thought the greed, selfishness and not thinking of others in the neighborhood is what lead to the issues being discussed. Ms. Bower reiterated that it was true that the camp was not just a summer home as they had spent a lot of money; thus. it was more like a three-season home, and they had discussed making it their full-time home. She asked the ZBA to think about it by placing themselves in her and Pat's situation.

Michael Paris presented and stated that he resided on the lake. Mr. Parris stated that he had brought the property back in 2015 similar to the applicant and spent six years on its development. He explained he spent the first year getting to know the people in the area. He stated that there were two older camps alongside him, and he built a rather large home of over 4,000 square feet and had to be cognizant to neighbors. He stated that when they had removed the old camp of approximately 2,000-2,500 square feet, they could have located the new home location closer however did not and instead respected the scenic preservation and the homes alongside of them. He stated that he watched the area around the lake develop over the last five years and realized that they are not building more lake land; thus, property owners needed to conform to what existed. He explained that while he had a very large home, an opportunity arose, and he purchased the 7-acres behind him to maintain his privacy as well as respect the privacy of neighbors. He concluded by asking the ZBA to understand that the decision made would be a decision that would stand for future applicant to requests.

Susan Djernes presented and stated she resided on Crooked Lake at 18 Saxby Way and was Pat's sister. Ms. Djernes stated she had watched the June 2, 2021 PB meeting and had been impressed with the conversation of the Board members in regards to the project. She noted that the one thing that stuck with her was when one of the Board members voiced his opinion on why someone else's mistake should be the burden of Pat and Anne – she asked the ZBA members to think about that statement. Ms. Djernes closed by adding that when living on the lake, it is important not to start to allow such variances as everyone would then be seeking the same down the road.

Doug Carroll presented and stated he resided at 20 Stone Camp Way and that his wife Pat had spoken earlier. Mr. Carroll stated that a lot of what he had to say had been said by others already. He pointed out that much of what had been said were comments he had made back in December when the initial variances were sought. Mr. Carroll stated that he looked at the five factors considered by the ZBA in the granting of an area variance along with the adding of conditions. He explained that one of the conditions added for this property and had been addressed in three or four meetings was for things like drainage which had not been dealt with. Mr. Carroll stated he had viewed the minutes of the original meeting back in December and one of the things that was addressed was if the variance was substantial. He noted that a comment had been made that "well it was less than 40%" when it was more like 50% for the front road front setback and the side yard setback going from 20' to 10'. He further stated that since that time, those variances have changed even more substantially. Mr. Carroll stated that he believed it behooved the Town to not get involved in letting these meetings re-dictate policy and lead to a change that would be allowed on a permanent basis such as written into a new Zoning Code. He stated that he could see some need for variances however as stated by Mr. Tingley earlier, there is room to build on the 1.84-acre lot. Mr. Carroll then asked that the variances not be reapproved and agreed with going forward as Mr. Tingley had presented.

Chris Bradley presented and stated that he lived at 197 Methodist Farm Road along with his wife Amy. Mr. Bradley explained that they were on a shared right of way down to the lake. He stated that he was happy for those folks building a home on the lake and had no problems with it. He pointed out those properties were all camps years ago and all have been torn down and new houses were built and added that the property that the applicant owned was the same way. He further stated that the camp on the

applicant's property had been so bad that it had to be burned down by the fire department and trees had falling; thus, it was a mess. Mr. Bradley stated that, in his opinion, the applicant has cleaned it up and made it a very nice-looking piece of property. He added that there would not be an adverse effect to him in regards to the shared right of way. Mr. Bradley stated that if Andy Bulmer was not known then why was it that the Town of Poestenkill provided a Code Enforcement Officer. Mr. Bradley noted that it had been stated that the road was owned by Pat and Ann and did not think that was correct.

Charles Zipprich presented and stated that had been on the lake for approximately 50 years resided at 34 Saxby Way. Mr. Zipprich stated that he felt he needed to speak as it appeared like some character assassination had taken place. He added that if he had a problem at his house, Mr. Bulmer was the first one there to help. He stated, he felt the same as the prior speaker in that the proposed home fitted within the character of the lake and was an improvement.

Scott Blair presented and stated that he resided at on the lake at 32 Perry Way. Mr. Blair stated that his question was not about the Bulmer's however was about the integrity of the ZBA. He further stated that the applicant previously sought three variances and now was up to six and asked if the ZBA was ready to treat the whole Town the same as Mr. Bulmer. He stated that the layout of his property was like the applicant's however he chose not to apply for area variances and instead built his home on the 1-acre area and utilized the .25-acre on the lake for his beachfront. He closed by reiterating to the Board members to be careful on the decision rendered as it could set a precedent for others to ask for the same.

Chris Djernes presented and stated that he resided at 18 Saxby Way and had another camp. Mr. Djernes stated that he had empathy for what the Bulmers were going through during this difficult time. Mr. Djernes referred to Sarah Campbell's earlier statement regarding a mistake had been made. He then referred to Jonathon Tingley's acknowledgement of other mistakes that had been made. Mr. Djernes stated that he understood that it was to be a dream home for the Bulmer's however agreed with others in that the neighbors should not have to suffer the consequences. He closed by asking the Board members to do the right thing.

Libby Bulmer presented and stated she resided at 41 Saxby Way. Ms. Bulmer stated that she disagreed with some of the previous speakers who indicated they were neighborly. She explained that during her visits to enjoy the lake, the neighbors would come outdoors and try to intimidate her by taking pictures of and recording her on their cellphone. She stated those actions were not neighborly but rather made her not want to be there. Ms. Bulmer closed by stating that she did not go to the property anymore without her father as she did not feel safe to do so otherwise.

Katherine Lawrence presented and stated she resided at 29 Stone Camp Way. Ms. Lawrence explained that she lived on the lake for 67 years as her grandfather had owned the camp. She stated that she wished to see all enjoy the lake; however, felt that the zoning laws should be property followed. She added that she had written a letter to the Bulmers to explain why she would be writing to the ZBA asking for a site visit in order that an informed decision could be made. Ms. Lawrence stated she was familiar with the prior small cottage of 406 square feet that had existed on the applicant's property. She continued to say that in order to fix the property for a new home build, multiple variances had been requested. She noted that nearly all the trees had been removed and rocks were placed in existing drainage pipes and PB members had made multiple site visits. She stated that a stop work order had been placed at the property after several variances had been violated. She went on to say when a mistake is made, the owner should rectify mistake according to the designated regulations originally set forth by the PB and the ZBA. Ms. Lawrence added that remedying the problem should not include a request for additional variances. She stated that there seemed to be a disregard for the boundaries set by approved variances which many felt

was not neighborly. She stated that she respectfully requested that the Town did not grant further variances to correct the problem.

Moira Bulmer presented and stated she resided at 41 Saxby Way. Ms. Bulmer stated that there was 2% of the foundation that was out of whack. Ms. Bulmer stated that they had realized that there were renovations that took place at the Bower/Simon residence for which there was no building permit – she noted that they were then informed to obtain one – yet the Bulmers had thought the project would require Scenic Preservation and possibly a variance. She stated that Bower/Simon had received an area variance for their porch to be screened-in; however, it turned out to be not in compliance with the variance. She explained that if their foundation were to be moved to be in compliance, it would not be noticeable from the Bower/Simon side. She added that where the foundation was placed would provide the Bower/Simon privacy for their backyard. She stated that she felt that the Bower/Simon screened-in porch would not be visible from the proposed deck. Ms. Bulmer stated that she also did not feel that the variances being sought had any adverse effects. She added that if the camps were built under today's codes, the ask would be for much larger variances than what they sought. She indicated that her parents lived on that lake and explained that two homes near her parents had much less than a 5' setback from the property line. Ms. Bulmer stated that when the original area variances were requested, the purchase of the property had not been finalized and due to the large cost wanted to be sure it would be feasible beforehand which is why they did not have final drawings. She felt that the statement made earlier regarding Andrew stating "we spent enough money already" was misconstrued. She stated that when they had gone in front of the PB, the architecturally drawing had not be ready; however, did have drawings that reflected the deck and screened porches. Ms. Bulmer stated that they had been harassed and intimidated by the neighbors and received very less than a neighborly welcome. She explained that Andrew had spoken with Bower/Simon and as they would be leaving for California, he provided his number if they had any questions. She added that she felt that the neighbors did not want anyone on that vacant parcel. She stated that they just wished to build their family home as they were currently living with her parents. Ms. Bulmer explained that the cameras had been placed there per a suggestion by WG due to the high cost of lumber that was at the site. She closed by stating that they had been given approval for the trees that had been cut down and some were taken down prior to approval for safety purposes.

Sarah Campbell, Esq. stated she heard the sincerity of all who spoke. Ms. Campbell wanted to note that there was no proof to suggest that the mistake was done on purpose. She added an example of that was when the Bulmer's originally sought area variance relief prior to purchasing the property. She stated that while she heard a lot of information from those who spoke; however, did not hear that much information with respect to the criteria that is considered for area variance. She asked to redirect the conversation to the criteria and stated that when the benefit to the applicant is considered versus the detriment to the neighborhood and community; other than not putting a structure in at all, she did not hear any substantial evidence to suggest that the variances being requested was unbalanced and such an extreme detriment that it would outweigh the benefits to the Bulmers.

MT read an anonymously submitted letter which was opposed the granting of additional variances. The letter stated that the applicant should have been aware and more careful when proceeding on the project as related to the variances initially granted. The letter went on to say that granting of the additional variances would not only be an invasion of privacy but also ill-treatment to the adjacent neighbors who also paid taxes as well as others who applied for variances and been denied. A discussion ensued on whether the letter should be accepted as it was unsigned. MT stated that while the letter was not signed, the concerns outlined in the letter should be weighed as the process moved forward.

MT closed the Public Hearing at 8:44 pm; seconded by WG and all approved. MT stated the three requested area variances would be treated separately. CC read the criteria that ZBA members considered upon making the determination for this Area Variance Application.

MT read into the record a memo from the PB Chairman, Art Herman regarding the Recommendation to the ZBA on the Area Variance application.

> Please be advised that at its regular meeting on June 2, 2021, the Town of Sand Lake Planning Board met and, as one of its agenda items, discussed the Area Variances Application pending before the Zoning Board of Appeals. The Planning Board made the following recommendations for each variance, as applied for, below.
>
> 1) The variance for a 3.0' and 6.9' side yard setback on the north side of the lot as presented on the site plan entitled Foundation Location Survey, Revision 5 dated April 30, 2021 herein attached received a "**negative"** recommendation by a 7-0 vote of the Board.
> 2) The variance for a 6.1' front yard setback as presented on the site plan entitled Foundation Location Survey, Revision 5 dated April 30, 2021 herein attached received a "**negative"** recommendation by a 5-2 vote of the Board.
> 3) The variance for a 20.0' side yard setback on the south side of the lot for a screened-in porch as presented on the Site Plan entitled Foundation Location Survey, Revision 5 dated April 30, 2021 herein attached received a "**positive**" recommendation with the condition that the variance for a 20' setback is only for the dimensions of the building footprint labeled "screened in-porch" on the Site Plan by a vote of 5-2 of the Board.

A motion was made by MT, SECONDED by GB. and was approved by a vote of four to approve (MT, GB, AL and WG) and one abstention (SB) and none against to identify this Board as Lead Agency and to classify the proposed action as a Type II Action under SEQRA for each of the subject applied for variances, including the side yard setback variances.

1. *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearly properties will be created by the granting of the area variances.*
   It is the determination of this Board that a significant undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of the area variance. It was noted that numerous public comments were received, including from neighboring property owners who stated that the further reduction of this side yard setback would create a hardship to the neighboring properties. It is noted that no other structures in the neighborhood are as close to their neighboring property, the effects of which are exacerbated by the size and elevation of the subject proposed dwelling in comparison with the other nearby existing dwellings properties. It is also noted that there is minimal vegetation between the properties.
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.*
   It is the determination of this Board that there is another method to achieve the desired outcome. It was noted that in many applications another method can normally be achieved even if feasibility is subjective. It was further noted that the situation could be remedied, and the original setbacks applied, and the house built per the variances granted in 2019. It is also noted that the subject property is 1.82 acres in size, resulting in there being other locations on the property where Applicant's dwelling could be constructed without it being constructed so close to the neighboring properties. Of note is that Applicants had applied to subdivide the property just earlier this year. Applicant could also simply build a smaller house. Therefore, the benefit could be achieved by some other method.

3. *Whether the requested area variance is substantial.*
   It is the determination of this Board that the requested area variance of 5'2" is substantial as that would be a 75% variance from the required setback. It was noted that the requested side yard setback of 5'2" is normally considered substantial and over the threshold of actions taken in the past. The setback of 11'9" is considered less substantial at the corner than the other but the average of the variances for the side would well exceed 50%.
4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district*.
   It is the determination of this Board that the proposed requested variance is to establish a larger dwelling creating more impervious surface which could have more impact on the physical environment. It is noted as well that due to the topography the proposed house will sit higher than dwellings on neighboring properties.
5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variances.*
   As with most matters that come before this Board, the difficulty is self-created as the variance is needed because the Applicant desires to continue with construction at variance with existing reliefs and requirements. Applicants assert that the error requiring the additional relief resulted from the changing of contractors. It is noted that the previous variances in 2019 were granted over the significant objection of neighbors and the need to be careful about complying with the strict letter of that approval was abundantly clear to all. In furtherance thereof, as to the original variances granted, it is the responsibility of the landowner to determine the applicable property lines and measure from the proper points of the lot; therefore, the need for the desired additional variance is self-created. It was not created by anyone other than Applicants/Applicants' contractors.

WG asked that it be noted that he had seen Mr. Bulmer at various locations outside of Town Hall and stated there had never been any conversation nor has he personally been approached for any favors. WG then stated that he had done a site visit and noticed how things got misconstrued on the site and not set up properly. WG added that he understood the applicant's point but also saw the neighbor's point. WG stated that he had mentioned to Mr. Bulmer during the site visit that he noted that other properties on the lakes within the Town that had setbacks of 10' or less and thought the request kind of went within character of other things done in the area. WG noted that he had told Mr. Bulmer to lock up the lumber. WG added that Mr. Bulmer stated that it was not a Town road; thus, no snowplows came through which led WG to think that the requested 6' from the road would not be an issue. WG stated that was the extent of the conversation with Mr. Bulmer and he did not indicate either way on how he would vote on the variances.

CC stated that any Board member should disclose any conversation that may have taken place when a site visit was performed.

AL summarized the site visit done by her and MT. AL stated it was professional and no line uncrossed. She added it was a bit uncomfortable as it was obvious that the human connections to the neighborhood had been impacted. AL stated that she also had other interactions with Mr. Bulmer and never was there any mention of his personal project. MT added that the conversation had with the applicant was factual – they asked about the distances and then did a visual inspection.

GB stated she had done a site visit approximately a month prior and had spoken with Andrew and Moira to view the locations for where the variances were being requested. GB added that there was no conversation, one way or another, as to how the variances would be handled.

MT stated that she was unwillingly to allow an application to go forward when ultimately the applicant was responsible for what had been previously approved by the ZBA. She added that she did not feel that such a precedent should be set for the Town.

MT motioned to deny the Area Variances as amended for the north side setbacks of 5'2" and 11'9," SECONDED by WG and passed with four votes in favor (MT, GB, AL and WG) and one abstention (SB) and none in favor of such grant.

MT then stated for the front yard setback the requirement was 50' and the previously granted a variance for 25' and the latest application sought a 6.1' setback. A motion was made by MT, seconded by WG, and passed by a vote of four in favor (MT, WG, AL and GB) with one abstention (SB) and none against to identify this Board as Lead Agency and to classify the proposed action as a Type II Action under SEQRA.

MT then went over the Area Variance criteria:

1. *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearly properties will be created by the granting of the area variances.*
   It is the determination of this Board that a significant undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of the area variance. It was noted that numerous public comments were received, including from the abutting neighbors, that the requested setback would not be in character with the neighboring properties. No other houses are located as close to the road and the ability to perform road plowing/maintenance may be impacted with a structure so close.
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.*
   It is the determination of this Board that there is another method to achieve the desired outcome. It was noted that the applicant could relocate the house utilizing the originally approved relief of 25', per the prior approval. It is also noted that the subject property is 1.82 acres in size, resulting in there being alternate locations where Applicant's dwelling could be constructed without it being constructed so close to the road and neighboring properties. Of note is that Applicants had applied to subdivide the property just earlier this year. Applicant could also simply build a smaller house. Therefore, the benefit could be achieved by some other method.
3. *Whether the requested area variance is substantial.*
   It is the determination of this Board that the requested area variance being sought is substantial and in this Board's opinion substantially greater than what had been originally approved. It was noted that the requested front yard setback of 6'.1" versus the required 50' setback is an 88% variance and considered very substantial and well over the threshold of actions taken or approved by this Board in the past for a front yard setback of a primary structure.
4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district*.
   The increased footprint of the house increases the amount of imperviousness that could have impacts. However, the increased footprint on the front of the house does not seem like it would have an adverse effect or impact on the foregoing. Moreover, the ability to maintain the road may be impacted by a house being too close to the road, particularly related to snow removal/plowing.
5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variances.*
   As with most matters that come before this Board, the difficulty is self-created as the variance is needed because the Applicant desires to continue with construction at variance with existing reliefs and requirements. Applicants assert that the error requiring the additional relief resulted from the changing of contractors. It is noted that the previous variances in 2019 were granted over the

significant objection of neighbors and the need to be careful about complying with the strict letter of that approval was abundantly clear to all. In furtherance thereof, as to the original variances granted, it is the responsibility of the landowner to determine the applicable property line and measure from the proper points; therefore, the need for the desired additional variance is self-created. It was certainly not created by anyone other than Applicants/Applicants' contractors.

WG added that he apologized to the Board members and everyone else as he has a construction background and been through numerous meetings of this type and felt that he should have asked for elevation drawings before initially proceeding. He added that at the initial review of the application, only the footprint of the foundation was available; thus, unable to know if there was going to be bump-outs. MT rebutted that statement as the information mentioned by WG was not historically required as it could be a cost incurred by applicants that could high. She added that it was also not typically required as the ZBA provided the maximum variance allowable for such proceedings and the applicant's responsibility to stay within what had been granted.

A motion was made by MT, seconded by seconded by WG to deny the variance. Motion passed by a vote of four in favor of the motion (MT, WG, AL and GB) and one abstention (SB) and none to grant the Area Variance as submitted for a front yard setback of 6.1'.

MT stated that the Applicants sought a variance to establish a south side setback of 20' for a screened-in porch to be added to the proposed single-family dwelling. The side yard setback requirement per Chapter 250 of the Town Code is 30'.

A motion was made by MT, seconded by WG and approved by a vote of four in favor (MT, WG, AL and GB) and one abstention (SB) and none voting against identifying this Board as Lead Agency and classifying the proposed action as a Type II action under SEQRA.

MT then went over the Area Variance criteria:

1. *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearly properties will be created by the granting of the area variances.*
   It is the determination of this Board that, if any, change to the neighborhood will be at best insignificant and that no detriment to nearby properties will be created by the granting of the area variance. It was noted that the screened-in porch had not been a part of the original relief sought.
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.*
   It is the determination of this Board that there is no other method to achieve the desired outcome with the dwelling in the previously approved location as the screened porch is a new addition that would not otherwise fit within the previously approved building envelope. It was noted that this request was not a part of the original area variance submission.
3. *Whether the requested area variance is substantial.*
   It is the determination of this Board that the requested area variance being sought is not substantial and below the threshold of actions approved in the past by this Board.
4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district*.

   The increased footprint of the house increases the amount of imperviousness that could have impacts although the footprint of the proposed screened-in porch is unlikely to have a significant adverse effect or impact.

5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variances.* As with most matters that come before this Board, the difficulty is self-created as the variance is needed because the Applicant desires to add a screened-in porch as an addition to a proposed building project that cannot be accomplished without seeking a variance. It was noted that the requested screened-in porch was not applied for in the original area variance submission.

MT noted that this was the only area variance that the PB had provided a positive recommendation on. A motion was made by MT, seconded by GB and approved by AL. WG opposed and SB abstained, approving the Area Variance as submitted for the south side yard setback of 20' for an area not to exceed the dimensions of the screened in porch.

Area Variance Application

Paula DeCola (Applicant) **Tax Map #: 158.4-2-5**
52 Loon Creek Lane Averill Park, NY 12018 Lot Size: .133 acres
R-Residential Zoning District

An area variance application regarding an insufficient side yard setback.

Contractor Dan Razzano presented and stated that his client wished to build a carport on a the side of the home and convert an existing garage into living space to include a replacement of the overhead doors with windows. He explained that carport would require extending into the side yard setback by a few feet. MT clarified that the area variance for the one side yard setback being sought was for 8.4'. Ms. Ryan noted that the other side yard setback was already at 5.3'.

Mr. Razzano explained that a majority of the carport would be pervious material as it would be aggregate underneath except for the 6' off the rear which would be a shed structure for storage. MT asked the age of the existing home. Ms. DeCola explained that it was her understanding that there had been an old home that was torn down and the current structure was built approximately a year ago. MT asked if the new building was in the footprint of the previous one to which Ms. DeCola agreed. MT noted that would be the reason for the 5.3' side yard setback for the one side. Ms. DeCola added that the neighbor on the side of the proposed carport was not close by. Per MT's inquiry, Ms. DeCola agreed for a site visit to be done. Ms. DeCola stated she had spoken to her neighbors on both sides on the proposed plan and they did not voice any concerns. Ms. DeCola stated her intent was to build with a real conscientiousness to the issues of water as she served as Chair on the Water Quality Committee for the Lake. She added that when done she would landscape with native plants and ensure a pervious structure to protect the lake. It was discussed that normal side yard setbacks under the Zoning Code were 20' on one side and 30' on the other side and as one side was down to 5.3', with no previous record available, it would be up to ZBA to determine the amount of setback to allocate to the proposed project side yard. Ms. DeCola stated that a site visit would reflect how close the other homes were as they had all been old camps. She reiterated that the proposed project side was very far away from the neighbor. GB stated that she had done a drive-by and agreed with Ms. DeCola that there was a big distance. GB then asked if the actual site plan had been shared with the neighbors. Ms. DeCola replied that while the project had been discussed, the actual site plan had not but shared with them however she would be happy to reach out to them and do so, if needed. GB suggested that the actual plans be shared with the neighbors in order that they have a full understanding of the project to which Ms. DeCola agreed. The proposed shed area and layout was discussed. MT stated that as it was a pre-existing house with the one side yard setback of 5.3' having always been there; she recommended that the project side yard setback reflect 30'. CC noted that it was not for the ZBA to decide the initial required setback needed but rather an interpretation made by the Building Inspector. WG stated that without that information, the application could not be considered

complete in order to set the Public Hearing to which CC agreed. MT agreed and stated that the public would need to know what the variance was being requested for to which CC agreed. It was clarified for the contractor and the applicant that the interpretation was needed from the Building Inspector prior to the ZBA proceeding.

WG motioned for the ZBA to request an interpretation be made by the Building Inspector on whether the side yard setback for the proposed carport area should be at 20' or 30'. The motion was seconded by MT and all approved.

Appeal Application

Matthew Griffin (Applicant)
42 Eastern Union Turnpike
Averill Park, NY 12018
R-Residential Zoning District

Project Address:
37 Eastern Union Turnpike
Averill Park, NY 12018
Tax Map #: 159.-1-2.1

An appeal on the classification of a use as determined by the Code Enforcement Officer.

Christopher Langlois, Esq stated that he had been hired by the Town of Sand Lake to represent the ZBA as Special Counsel as Craig Crist had recused himself from this matter.

Matt Griffin presented and stated that he resided directly across the street from basketball courts that had been unlawfully constructed without any permits or approval from the Town for the sole purpose of to be the private practice facility for teams in an AAU affiliated fee-based youth basketball club and to host development clinics. He then presented to the Board some exhibits directly from the HAVOC. He explained that he had been a law enforcement officed for 20 years and a criminal investigator for the last 11 years and continued in a regulatory capacity as an investigator in a civilian capacity. Mr. Griffin stated that the activity so negatively impacted the character of the neighborhood and resulted in two positive declarations that shrubbery and/or arborvitae would not fix. He stated that by the Town's own Municipal Code under the Reasonable Noise, the facility was considered a public nuisance. Mr. Griffin went to say that the facility was illegally constructed in a residential zoning district and the prescribed activity was prohibited within said district. He explained that when a neighbor had gone to the facility to speak about the noise, the cops were called in and that neighbor was given a trespass warning as the property was conspicuously posted with no trespassing. Mr. Griffin explained that he was before the ZBA to appeal Code Enforcement Officer (CEO) Michael Wager's determination on the classification of use as Recreation Open Space as it was incorrect. He stated that the definition relied upon does not apply to the private commercial activity at issue, not-for-profit or otherwise. He read the Recreation Open Space definition and pointed out that a key feature of the definition was a requirement that it be for an "other than personal public recreational use" to fit within the definition. Mr. Griffin stated that unlike any other "public facility" the basketball courts were private as evidenced in part by the no trespassing signs that were posted and enforced by the NYS Police. He added that the Recreation Open Space definition explicitly referred to public parks and public beaches which could be used for any of the enumerated activities but not private facilities. He added that use of the courts was only accessible to those who paid the fees to join the HAVOC. He further stated that the examples in the definition were all in line with the spirit of the Comprehensive Plan regarding Open Space. He added that a review of that Plan reflected it meant public parks for outdoor activities commonly exercised on publicly accessible land for the common benefit and enjoyment of the taxpayers. He noted that the activities listed under Recreation Open Space definition and stated that basketball was not one of them because it was noisy.

Mr. Langlois stated that he wished to clarify the process that the ZBA would follow in considering the appeal. He explained that this meeting would be to determine whether the application was complete in

order to schedule the Public Hearing for the next meeting where the public could be heard, including Mr. Griffin should he wish to do so. Mr. Langlois stated it was for that reason that the ZBA would not be making any decision on the merits of the appeal at this meeting.

Mr. Griffin stated there was no rational reading of the section to include a private club-based basketball park on private property accessible to only those who pay the fee to join HAVOC. He added that the courts were not a playground area or picnic area and certainly not a public park. He went on to say that the characteristics of Open Space use is for public recreation areas and did not include the activity proposed in the Jankovic's application. Mr. Griffin then stated the definition of Recreation Club described the activity a little better however was unsure if the use was Recreation Club or Commercial as AAU derived income from the activity. He added that it was a private basketball player development club and while some aspects looked like Recreation Club, others looked more commercial, however none of it was Recreation Open Space. Mr. Griffin then went over the Zoning Code definition for Recreation Club. He stated that HAVOC was unquestionable a group of people organized for a non-for-profit purpose to pursue common goals such as participation in clinic and practices to play in tournaments around the nation and to gain exposure for possible college scholarships. He stated that at the level that HAVOC teams played at, it was ultimately a business. He then shared from the HAVOC website a copy of their goals and national tournament schedule. He then indicated that the definition went on to list usual characteristics of Recreation Club which aligned with HAVOC in their membership qualifications and fees. He then shared a HAVOC announcement which had been posted for tryouts that had been held March 14th at Saratoga Springs Rec Center. He pointed out that it was listed that the HAVOC teams had regular meetings and must agree to abide by the AAU bylaws. He also shared that HAVOC had also posted a Summer/Fall season schedule for HAVOC on the Hill. Mr. Griffin pointed out that HAVOC had a busy schedule and continued to meet and had been back in the gym since March 14, 2021; contrary to public statements made in support of the Special Use Permit Application made on March 17th and reported during the Planning Board (PB) meeting that gym space could not be rented due to COVID concerns. He added that HAVOC had been utilizing the Boys and Girls Club in Rensselaer in addition to the Saratoga Rec Center in Saratoga Springs – both of which appeared to have been utilized prior to COVID. Mr. Griffin then stated it was nice to see they had a full season back in the gym with no need for HAVOC on the Hill. Mr. Griffin further stated that during October 2020, the Jankovic's courts had been utilized for a month-long youth basketball clinic and shared a post/advertisement on it that was put out by the TFLO Basketball Player Development LLC - a for profit domestic LLC. He stated that it was unlikely that this clinic was held at no cost to participants; thus, would not be club activity but more appropriately found in commercial use which is expressly excluded from club designation in the definition. He stated that after a review of the exhibits and getting a full picture of the activities that were proposed, along with what had already taken place at the courts from August to the end of October 2020, it was plain to see the open space zoning designation as erroneous. He concluded by stating that through the appeal and exhibits submitted, he demonstrated that the past and proposed activity at the courts was clearly Recreation Club Use; and as such, not an allowable use in a residentially zoned area.

MT reiterated that the role of the ZBA at this point was to determination completeness on the appeal application as related to the CEO's determination of Recreation Open Space. Mr. Langlois added that the ZBA also need to consider if the appellant identified in his submissions exactly what he is appealing. MT replied yes. Mr. Langlois then stated that he believed that the appellant also articulated a reason for the disagreement with the CEO's determination. He added that it was now up to the Board to decide whether the materials submitted were complete in order for a Public Hearing to be scheduled. MT asked Board members their thoughts on the level of information received from Mr. Griffin. WG replied that he felt it was straightforward and Mr. Griffin provided a lot of information to which AL agreed.

MT asked if a County Referral was needed. Mr. Langlois replied he did not believe so for an appeal decision to render a code interpretation as no variance was being granted. MT then asked if it was in the purview of the ZBA to ask the Board members if they felt that the information provided by the CEO was sufficient. Mr. Langlois replied that the CEO determination was what it was; however, for the Public Hearing the CEO could be invited to elaborate on it and answer any questions the Board may have on his thoughts that lead to the determination.

Ben Neidl, Esq. stated he represented the Jankovics and asked to make a few brief procedural comments which would not be about the testimony or the Public Hearing. MT agreed for him to do so. Mr. Neidl referred to a late submission of a letter he had submitted to the Board to which MT indicated they had received. He stated that they argued against the merits and absolutely disagreed with the appellate arguments of the merits as expressed in Mr. Griffin's submission. He added that he believed the submission of the Appeal to be untimely as the Town Code indicated it should have been done within 60 days from when filed in the Town Clerk's Office. He explained that the CEO decided in writing on August 19, 2020 that it was a Recreation Open Space use and filed with the Town Clerk. He further stated that he understood that in April 2021, the PB asked the CEO for clarification, and he had restated the same. Mr. Neidl then stated that the PB did not nor intentionally restart the 60-day appellate period which exhausted in October 2020; thus, found the Appeal application to be untimely; and as such, should be dismissed.

WG asked if when the CEO made the determination, was it made public for all to know when the clock started. Mr. Langlois replied that he had seen a copy of it with an April 20, 2021 date stamp filed with the Town Clerk and presumably, as of that date, considered a public document that technically the world was on notice. Mr. Langlois then stated that a question raised was whether the appellate was appealing the determination made by the CEO and added that the answer was yes. He then stated the next question was whether the appeal was made within 60 days of the date of the CEO determination – he added that Mr. Griffin was appealing the April 20, 2021 CEO letter of determination via an Appeal application filed on May 27, 2021. He explained that if the ZBA found it to be timely, the Appeal is accepted and move forward; if the answer was no, then the ZBA could reject the Appeal as being untimely and not move forward.

MT motioned to deem the Appeal Application as filed timely, based on the facts presented, and deemed the application as complete to schedule a Public Hearing for July 15, 221; seconded by GB. WG asked for clarification on timeliness for the Appeal Application on Michael Wager's letter of determination on the classification of use stamped April 20, 2021. Mr. Langlois explained that Mr. Griffin was appealing the letter of determination dated April 20, 2021 issued by CEO Mr. Wager. WG asked about the August 2020 letter mentioned by Mr. Neidl. Mr. Langlois explained that the August 2020 letter to the Jankovics from CEO Mr. Wager directed them to proceed with a Special Use Permit – MT read the letter. Mr. Langlois then explained that the circumstances which prompted the letter of determination on classification of use by CEO Mr. Wager needed to be looked at – he added that it was the Planning Board that had asked Mr. Wager for a determination on the issue.

MT re-motioned to deem the application timely as well as complete and scheduled the Public Hearing for July 15, 2021 at 7:00PM; seconded WG and all approved.

DRAFT RESOLUTIONS FOR APPROVAL – Applications approved at the May 13, 2021 ZBA meeting

- <u>Area Variance Application for Sharon Hogle Guthier & Susan Hogle Rolands-Clemens</u>
  MT motioned to waive the full reading of the draft Resolution; seconded by GB and all approved.
  MT motioned to approve the Resolution in its entirety; seconded by GB and all approved.

- Area Variance Application for Valerie Balga
  MT motioned to waive the full reading of the draft Resolution; seconded by AL and all approved.
  MT motioned to approve the Resolution in its entirety; seconded by SB and all approved.

ADJOURNMENT – MT motioned to adjourn the meeting at 10:00pm; seconded by SB and all approved.