

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
June 16, 2016**

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: Chairwoman Judy Breselor called meeting to order at 7:00 PM.

MEMBERS PRESENT: Chairwoman Judy Breselor
Geraldine Burger
Scott Bendett
Melissa Toni
Jeb Bond
Lawrence Howard, Esq., ZBA Attorney

OTHERS PRESENT: Curtis Dybas, Michael Paris, Kathleen Paris, Monica Ryan, John Macri, Diane Hunt, Brian Hunt, Ed Patanian, Paul Splain, Barbara Martinage, Kathy Wolf, Dan Wolf, Adrienne Buckingham, Robert Buckingham, Scott Blair, Russ Blair, William Hoffay, Arthur Kleiner, and Mary Ann Kleiner-Colehamer,

RECORDING CLERK: Karol O'Sullivan, Clerk for the Planning Board and Zoning Board of Appeals

ITEM 1. Area Variance Application and Public Hearing

Curtis Dybas/Michael and Kathleen Paris
12 Twin Lyons Way
Averill Park, NY 12018

Tax Map #159.4-1-19

An Application for an Area Variance to convert an existing structure into a dwelling, creating two dwellings on one lot with a deficient lot size and lot frontage.

Curtis Dybas addressed the ZBA on behalf of Michael and Kathleen Paris. He explained that the property was purchased a year ago and Phase 1 of their renovations, the shoreline, is almost complete. They are now entering the next phase of renovating an existing small brick chapel into a one bedroom guest cottage with new kitchen and great room. The structure was once a religious retreat for nuns but has not been used in almost 27 years. The building is structurally sound but needs a new roof. The Paris's would use the guest structure to live in next year until

their new home is built on the same property next summer. Then the structure would be a guest house. Judy Breselor (JB) stated that the property is 1.37 acres and 2 acres are required for two structures....a 19% deficit. She stated there is insufficient lot frontage but that was created prior to their purchase of the property. The structure is set back 200' from water, so no Scenic Preservation review was necessary. Scott Bendett (SB) stated the chapel structure is tucked in the back of the property and cannot be seen from the driveway or shore. The public at the ZBA complained they could not hear the discussions, so JB raised her voice and restated the facts to the public. She then opened the Public Hearing at 7:06 PM and invited the public to speak for or against the Area Variance Application.

Laura Shultz from Thais Road approached the ZBA and asked if she were to put another building on her property which is less than two acres, would she be allowed to do so. JB replied that her inquiry would have to be addressed by coming before the ZBA with her own application and decisions such as that would be addressed on the merits of her application. JB stated that the Public Hearing was specifically for the Dybas/Paris application. Ms. Shultz then asked what the criteria would be to base a decision. JB explained further that ZBA decisions for such area variances are based upon:

- Can the benefit be achieved in another way?
- Does the action pose an undesirable change in the character of the neighborhood?
- Is the request substantial?
- Will it have an adverse physical or environmental impact?
- Is alleged difficulty self-created?

Ms. Shultz accepted the explanation and asked if the property was on septic or sewer and she was told sewer.

JB closed the Public Hearing at 7:07 PM.

JB asked the ZBA if anyone would like to make a motion on a SEQR determination. SB motioned a Type 2 SEQR and Geraldine Burger seconded the motion and it was unanimously approved. JB explained that this SEQR determination is saying the plans will not have an environmental impact. SB motioned to approve the Area Variance Application and Melissa Toni seconded the motion with a unanimous approval.

ITEM 2. Special Exception Application and Public Hearing

EJP Inc. /Edward Patanian
13 Garner Road
(Lot 11R Pond Hollow)
Averill Park, NY 12018

Tax Map #158.00-1-11.4

Special Exception Application seeking a special exception for commercial excavation in an A-1 Zoning District. (The Public Hearing from the May 19, 2016 ZBA meeting was left open until the June 16, 2016 ZBA meeting.)

JB stated the ZBA would be addressing the same Special Exception Application which has been addressed no less than four times in the past four months by the ZBA. JB summarized the Special Exception Application details and then called Ed Patanian (EJP) to present before the ZBA.

JB asked ZBA Attorney, Lawrence Howard (LH), to describe to the public what a special exception is for excavation in an A-1 Zoning District. LH explained what is allowed and not allowed under a special exception. Permitted uses follow Town Zoning Code in an A-1 Zoning District. Permitted use means an applicant meets the permitted lot size, setbacks, etc. A special exception requires the applicant to come before the ZBA to seek whether there are any special conditions required by the Town. Excavation falls under the special exception and NYS law supersedes local Town zoning for excavation. Therefore, the Town is limited to what the ZBA can do to limit use.

JB offered to read highlights of an April 8, 2016 letter from the NYS Department of Environmental Conservation to the Town of Sand Lake regarding the application by EJP to obtain a Mined Land Reclamation permit. (Highlights in italics below.)

History

The project was approved by the Department (DEC) and the Town of Sand Lake on November 4, 1988, with the Department acting as Lead Agency for the SEQR review, which included a review of issues such as noise, traffic, and mineral extraction. The project included the removal of approximately 100,000 cyds of material from Lot 11R to be utilized in the construction of Pond Hollow Estates, and therefore, that removal was exempted from the Mined Land Reclamation law.

Subsequent to the completion of construction of Pond Hollow Estates, Mr. Patanian continued to grade the site and remove sand and gravel, believing the site to be exempt. However, review of the record and on-site inspections confirmed that since construction of Pond Hollow Estates is substantially completed, continued removal of materials from the site or grading of the site to complete reclamation of the area now requires a Mined Land Reclamation permit, which Mr. Patanian has applied for.

SEQR

Although the original proposal was reviewed under SEQR as a subdivision and “borrow pit/excavation”, the project will continue beyond what was previously reviewed, and therefore, the Department felt that an updated SEQR review was necessary. The project received a coordinated review with the Town as an Unlisted action, which commenced on January 8, 2016.

Town Comments:

Proper erosion, sediment and storm water protection controls: The approved plans demonstrate that all storm water runoff will be maintained inside the limits of the mine, with no off-site discharge. Proper erosion and sediment controls are included in the work plans. Areas that were mined as part of the subdivision construction have already been reclaimed, and reclamation will occur concurrent with mining where possible to minimize exposed soils.

Concurrent reclamation should be required, with no more than 2 acres active at a time: The approved Mined Land Use Plan (MLUP) shows a total life of mine of 3.8 acres, however about half of that acreage is dedicated to the haulroad, stockpiles, reserved topsoil and equipment and materials storage areas, which must be included in the bonded area until they are seeded and vegetated and approved as reclaimed. These areas are substantially at final grade already. As requested, concurrent reclamation will minimize exposed areas as mining progresses.

Hours of Operation should be limited to Monday-Friday from 7:00 a.m. to 5:00 p.m.: As part of the applicant's proposal to mitigate impacts to neighbors, the applicant has agreed to further reduce operating hours to 7:30 a.m. to 4:30 p.m. Monday through Friday, with no operation on weekends or federal legal holidays.

Equipment must be equipped with factory installed (or better) mufflers: The approved MLUP includes a provision for factory installed mufflers or their equivalent, and that equipment be maintained in order to reduce potential noise impacts.

Truck-trailer combinations are prohibited: The permit includes a condition prohibiting the use of truck trailer combinations or 18-wheel trucks as requested.

Limit truck trips to a maximum of 6 per hour, with an annual cap of 25,000 cyds of material per year: It is noted that the site is used intermittently as a source of aggregate for the applicant's construction business, and has been operated for several years. The approved plans confirm that extraction will be intermittent and remain well below 6 trucks per hour. Since mineral extraction is based on market demand or construction demand, mine activities and traffic numbers can fluctuate. While the Department does not put a "cap" on the amount of aggregate mined in a year, throughput is assessed using anticipated truck volumes outlined in the approved plans, and truck counts and limits are imposed only when necessary on larger more commercial mining operations. This mine proposes extraction on 3.8 acres over a 5-10 year period, and therefore, for this small operation, a cap on extraction is unwarranted, as the proposed extraction rate is already well below that amount.

Haul Road dust control: The permit contains conditions that require dust suppression on haul roads, as well as preventing tracking onto town roads.

JB explained to the public that over the past four months, EJP has come before the Planning Board and ZBA, and that he has always been cooperative and concerned about the Town residents (his neighbors). JB stated she was going to ask EJP questions:

- Did the mining excavation begin in 1988? - yes
- Did his application submitted this year differ from his 1988 application? – Not as far as the grades, but original plan did have other out buildings on it. He was approved for three originally? - Yes
- Is the excavation material used on his developments? - Yes
- Are any new buildings planned on this property to support operation? - Not at this time.
- Has the Town of Sand Lake approached him to buy his product? - No

- What is the number of acres involved? - 3.8 acres
- How many trucks are being used in this operation? – One typically. How many trucks does he own? - One
- Has he given permission to any other truck operation for this excavation work? - No
- How long does it currently take for a round trip for his excavation to load, transport and distribute? - One hour
- How many cyds is allowed on the current approval from DEC? - No limit
- How many cyds does his truck hold? - 16 to 18 cyds
- If he were to use six trucks per hour for his excavation work, how long would his mine last? - 3 to 4 years
- What truck route is being used? - To Westfall Village he uses Garner Road to Thais Road, across Eastview
- What are his hours of operation? 7:30 AM to 4:30 PM as previously agreed to

JB opened the Public Hearing at 7:22 PM. Kathy Wolf, 2 Pond Hollow Road, stated EJP trucks run by her home every 10 to 15 minutes for a total of 30 truckloads per day. She stated EJP is not adhering to his agreement. If EJP were running just 6 trips per day, she said she could live with that but he does not. JB asked her if she was sure they were all EJP trucks and she stated yes, that she knew the driver whose name is Scott. She stated she believed EJP is going for a commercial license and asked the ZBA for the definition of commercial. JB answered commercial is the term DEC uses and that EJP is only doing what he has been doing since 1988. Ms. Wolf asked if EJP would be selling his product and was told no. She asked if he could sell to other individuals if he wished to and the answer is yes, he could if he wished to. JB answered he only has 3.8 acres.

Kitty Swade stated she lives on Garner Road and what she was being told at this Public Hearing was that at least 56 truck trips per day would be running up and down her road. She said there is a bridge on Garner Road that has a weight limit and the sign on Garner Road for weight limitation has mysteriously disappeared.

Ron Lance stated he lives at end Garner Road and does not think the Town Roads in the area can handle this traffic unless someone is going to pay the Town for maintenance of these roads. He cited Burden Lake Road's condition and stated the County is not doing that road any justice. He stated the Town is not meant for more mines and the Town can't afford it. JB reminded him that this is not a new mine, but an existing one.

Laura Schultz from Thais Road asked if there is going to be only one route for EJP? She stated Thais Road already deals with the Hunt Mine and asked if EJP could take another route. Ms. Schultz asked if someone is monitoring this traffic and JB advised that DEC and Code Enforcement monitor.

Bill Hoffay from Hoffay Farms stated he was not complaining about the gravel banks in Sand Lake, but the process that brought everyone to the ZBA tonight. He explained the history of his mining operation and what he went through with the Sand Lake ZBA, Planning Board and Town Board (TB) to get his mining operation approved. He stated they spent all summer debating the issue amongst the three Boards and finally the Supervisor of the Town Board sent a letter to DEC to gain his approval to mine. He asked why the ZBA was addressing the EJP issue in June when the TB had sent a March 24, 2016 letter to DEC signed by all the TB. He stated the process should be handled the same for everyone. There was discussion about the adequacy of the Public Hearing notifications for the ZBA meetings dating

back several months. JB explained the March 24 letter contained the ZBA and TB suggested conditions for the DEC approval and that the Boards had started review of the EJP application back in January.

Arthur Kleiner, Garner Road advised that Sheer Road has a 10 ton weight limit with a 35 mph speed limit. Route 150 and Route 155 have 10 ton limitations, but Garner Road has no weight limitations with a 40 mph speed limit. He asked if there was any survey done regarding the truck traffic and a speed limit, stating it is a quality of life/safety issue. He stated he was opposed to any concessions on this issue and wanted restrictions. JB explained there two issues the ZBA can look at when making a decision on the application: how many trucks coming through local roads and the truck route. The ZBA has no authority under State Law to stop it. Mr. Kleiner stated this is a residential area and restated that trucks are driving through the area every 10 to 15 minutes. JB advised that not all of the trucks belong to EJP and he cannot be held responsible for all of the traffic. Mr. Kleiner stated EJP is claiming just one truck is being used and they would have to monitor the traffic with a trail cam to prove otherwise.

Barbara Martinage from Pond Hollow addressed her FOIL requests and some of the answers she received. She said the Town did not know the definition of a "borrower permit" and was told her questions in some cases were too vague to be answered. She raised new questions and threatened legal action. She stated that DEC has told her zoning issues are controlled by the Town and not by DEC. JB stated EJP is zoned for what he is doing. She referenced the 4/8/16 DEC letter to the Town and the language used in it regarding a construction permit vs. a mining permit. She stated EJP has had no approval for a mine, just a borrower permit. He has never paid fines for using the property as a mine. Then she asked the ZBA about the statements in the 4/8/16 letter regarding the three-year life of mine reference over a five to ten-year period and that there is no requirement to complete a permit. She asked how long would the mine last when running six trucks per hour over three years. JB answered that the mine would not last very long. JB explained that the ZBA has limited jurisdiction on what can and cannot be done and that the ZBA raised comments with DEC and some they agreed with and some they did not. Ms. Martinage stated that EJP wouldn't run out of product at the mine if he didn't move the product so quickly and suggested a good way for the Town to monitor the EJP operation would be to install motion detectors/cameras to document his operation. She advised the ZBA of how many homes have been or currently are on the market for sale in her neighborhood and how difficult the mines in the area are impacting their property values. She finalized by asking how well the Town is monitoring and documenting their decisions related to mining in the Town.

Adrianne Buckingham, 267 Thais Road, explained her ten-year old home is at the intersection of Eastview Road and Thais Road. She stated that her and her neighbors not only deal with EJP and Hunt Mine trucks, but also the Town of Public Works trucks. She explained her biggest concern was with the speed of the trucks and advised this traffic has changed her neighborhood. She asked that the truck routes be rearranged.

Dan Wolf from Pond Hollow Road asked whether the Town has been or will be receiving product from EJP and would it be considered commercial if it were. JB stated EJP has already stated that he has not been providing his product to the Town. Brian Hunt, Director of Public Works for the Town of Sand Lake, was in attendance at the Public Hearing. He was asked by the ZBA to address the question in his capacity with the Town and his answer was no, the Town has not approached EJP to obtain his product.

With no other questions/comments from the public, JB closed the Public Hearing at 7:45 PM and asked the ZBA for questions to EJP. Melissa Toni (MT) asked EJP how many trips per day he is committed to. EJP stated he would like to stick with the conditions in his DEC permit. He stated the problem is other

mines in the area have opened up and are running at a higher intensity and getting the neighbors upset. He said he can prove he is and has been using one truck, at a one-hour frequency for a long time. The reason the residents are getting upset is because there are more trucks running in the area than before due to the new operation running at a higher frequency. EJP was asked by the ZBA if he was comfortable with one truck and he answered no he is not happy with one truck when his subdivision work (Marie Heights/Forest Glen) requires more, but most of the time it is just one truck. EJP asked to address the ZBA stating he was upset when the DEC took away his original exemption and required him to obtain a mining permit (which has a definition of commercial mining), because up until then he had been operating in peace. He stated there has been no change in his operation; the grades have remained the same and the intensity has remained the same. His subdivision projects could increase his intensity for short periods of time and then stop, but he has stayed within the agreed upon DEC limits of frequency. Jeb Bond asked if the hours of operation from 7:30 to 4:30 are sufficient and EJP answered yes. Geraldine Burger raised EJP truck speed limits. EJP assured that his driver is very conservative and drives probably under the speed limit. After receiving a phone call complaint about his truck, EJP stated he asked his driver to stop using his motorized engine brake so as to cut down on noise. EJP explained the motorized engine brake in more detail and assured it is not as noisy as trucks with straight stacks. The public began shouting and JB reminded them of the limitations the ZBA has in stopping EJP's operation because it is allowed under the Town's zoning with the DEC mining permit. JB reminded the public that EJP has come before the Town four times since February 2016 answering the ZBA questions. JB asked the public to stop the audience chatter so the ZBA could conduct its business. EJP suggested to the ZBA that the residents should petition the DEC to intervene about the frequency of all mining operations on the road and then DEC could reduce the frequency of his competitors. JB again asked for calm. She stated the DEC is the authorizing entity to give EJP permission for his mining operation and the public should contact the DEC with issues.

Scott Bendett (SB) motioned a Type 2 SEQR coordinated review. MT seconded the motion and all approved. Lawrence Howard advised it should be a Type 1 SEQR. SB amended his motion to a Type 1 SEQR. MT seconded the motion and all approved.

Judith Breselor then stated the following:

This application is for a special exception approval to mine in the A-1 Zoning District. Mr. Patanian previously had a Mining EXEMPTION Permit from the DEC to remove sand and gravel from this property. A mining exemption, also known as a "construction exemption" allows a property owner to remove material from a site without a DEC Mining permit when it relates to a site development project. Mr. Patanian first received this mining exemption permit in 1988. At that time, the Town of Sand Lake Planning Board also granted Mr. Patanian approval to construct up to three equipment storage buildings on the site.

Recently, the DEC has determined that Mr. Patanian should seek a mining permit from DEC if he wishes to continue to remove sand and gravel from that site as the associated residential construction is largely complete (Pond Hollow). Mr. Patanian submitted an application to the DEC and the DEC has been coordinating its review with the Town. DEC is also the Lead Agency for the State Environmental Quality Review Act (SEQR) review on the mining permit. While the Town's zoning does allow mining or "commercial excavation" in the zoning district in which Mr. Patanian's parcel is located – the A-1 Zoning District, a Special Exception permit is required from the Zoning Board of Appeals. For this reason, Mr. Patanian submitted an application for a Special Exception on January 19, 2016. Mr. Patanian attended two ZBA meetings in February and March. The ZBA discussed a set of possible conditions that we

considered important, recognizing that the State Mine Reclamation Law LIMITS what a town can regulate with regard to mining operations. Mr. Patanian was agreeable to all of them. The ZBA submitted a set of possible conditions to the Town Board that it could recommend to the DEC for inclusion in the Mining Permit, if approved. The Town Board incorporated these conditions into its response to DEC.

Prior to the April ZBA meeting, Mr. Patanian received approval on April 8th from the DEC with a set of conditions. In that letter of approval the DEC discusses the conditions the Town had recommended.

The Sand Lake Zoning Board has determined that the preceding analysis of the record is sufficient to make a decision.

The Sand Lake Zoning Board hereby adopts the analysis of the coordinated review conducted with DEC and finds that the proposed commercial excavation special exception will not have a significant impact on the environment and grants this application a negative declaration.

The Sand Lake Zoning Board hereby incorporates the conditions of the NYS DEC MLR Permit ID 4-3840-00016/00003 as stated herein and adds the following condition: vehicular trips hauling sand and gravel from this site over Town controlled roads shall be limited to a maximum annual average of six (6) trips per hour.

JB made
a motion to approve the Special Exception requested by the applicant. MT seconded and it was unanimously approved.

MINUTES

The May 19, 2016 minutes were approved.

ADJOURNMENT

The ZBA motioned to adjourn the meeting at 8:00 PM.