

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
June 6, 2019**

The minutes, as follows, are intended to provide a general summary of the Agenda items and Public Hearings. Quotes presented are not verbatim, nor is all discussion which occurred presented herein. This document should not be relied upon as a transcript or the actual proceedings. The transcript of this meeting is on a digital voice recorder and available at the Town Hall.

- CALL TO ORDER: Melisa Toni opened the meeting at 7:00 PM
- MEMBERS PRESENT: Melisa Toni
Jeb Bond
Stuart Nippes
Craig Crist, Esq.
Geraldine Burger
- MEMBERS ABSENT: Scott Bendett
- OTHERS PRESENT: William Glasser, Danforth Chriss, Olivia Kelley, Nancy Kelley, Doug Kelley, Neil Van Buren Mike Wager, Don Moore, Monica Ryan
- RECORDING CLERK: Laura Fedoreshenko, Clerk for Planning Board and ZBA

Area Variance Application

Steven Cusack (Applicant)
Geraldine Swimm (Property Owner)
46 Old South Road
West Sand Lake, NY 12196
AR – Agriculture/Residential Zoning District

Tax Map #147.3-2-27

Lot Size: 10.42 acres

An Area Variance Application for a lot with an insufficient 3:1 width to depth ratio created as a result of a proposed Boundary Line Adjustment.

Melisa Toni (MT) explained the order of business. Surveyor William Glasser presented and explained that the Area Variance was needed as a result of a proposed lot line adjustment between the aforementioned two parcels. He further explained that the lot line adjustment would remove 50' from the Swimm property and result in that larger lot having an insufficient width to depth ratio of 3.05:1 versus the allotted 3:1; thus requiring the Area Variance. MT asked if the Zoning Board of Appeals (ZBA) members had questions. Jed Bond (JB) asked for clarification on the adjustment for which Mr. Glasser replied that the larger parcel had been in compliance however with removal of the 50' would result in being just over the 3:1 ratio limit. Mr. Glasser and ZBA members reviewed the site plan map. MT stated that as long as the application received was complete and with sufficient information, the ZBA could set the date for a Public Hearing. Stuart Nippes (SN) motioned to set the Public Hearing; seconded by MT and all approved. Mr. Glasser asked the date for the Public Hearing was informed that it would be on July 18, 2019. Mr. Glasser then asked if approval was still needed on the Boundary Line Adjustment for which Monica Ryan replied yes. Mr. Glasser pointed out that Ms. Swimm was trying to

sell the house; thus needed to resolve any issues as soon as feasible. MT asked if the Planning Board (PB) had previously approved the BLA as a conditional based on outcome of ZBA Area Variance application. Mr. Glasser replied that due to the 3:1 ratio issue; no decision had been made by the PB. MT explained that trying to move the next ZBA meeting would be an issue due to the July 4 holiday. Mr. Glasser replied that he understood the need for the Public Hearing to be on July 18.

Area Variance Application and Public Hearing

Danforth Chriss

125 Kipple Road

Sand Lake, NY 12153

RR – Rural/Residential Zoning District

Tax Map #161.-2-3

Lot Size: 18.5 acres

An Area Variance Application for construction of a 40' x 60' steel garage 20' into the front yard setback.

MT explained the Public Hearing process. Danforth Chriss presented and stated the proposal was to construct 40' x 60' steel garage to mainly store cars. He further stated that current codes are either that the new structure be in line or behind the existing building; however his plan is to place it 20' in front of the house. He added that this location would allow the utilization of the lower part of an existing driveway and would not result in any further digging out of an embankment; yet still be 107' from the road. Mr. Chriss then showed pictures of the site plan and examples for the color of the building which he stated would be brown and green to blend in. Mr. Chriss added that he has 600' of road frontage and while the new structure could be pushed back, he would rather not do so. At 7:10pm, MT opened up the Public Hearing and invited comments. As there were no comments, MT asked ZBA members if there were any further questions or if further discussion was needed. JB asked if the proposed location was shielded. Mr. Chriss responded yes and part of it would be into the woods. Mr. Chriss further explained that he has two driveways; one to the house and the other to the basement garage doors. He went on to explain how the embankment then comes around the lower portion and added that his septic is close by in that area. MT restated Mr. Chriss' reasons for not shifting the structure back as it would be too close to septic system and involve a large amount of embankment excavation work for which Mr. Chriss agreed. At 7:13, MT then motioned to close the Public Hearing; seconded by SN and all approved. MT then individually read the five criteria for ZBA members to discuss/comment on:

- (1)** whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
SN, JB and MT did not view the proposed location of the structure as significant or an issue and indicated that the character would be maintained. MT added that as the Area Variance being sought was for 20'; thus minor.
- (2)** whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
MT stated that she could not foresee the project be accomplished by pushing it back 20' as Mr. Chriss had sited potentially jeopardizing the septic system and need for large amount of excavation of an embankment. SN agreed.
- (3)** whether the requested area variance is substantial;
MT stated that in her opinion, this project is not seen as substantial. She added that 20' was viewed as minor as it would not be the whole structure, just a small portion of it.
- (4)** whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

MT stated that it would be doubtful if this area variance would have any effect on the environment considering it would be a garage; thus not viewed as an adverse impact.

(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 noted that while the owner realized the hill could have been an issue when previously purchased, however amenities had already been built.

MT reiterated that the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider the evaluation of the 5 criteria previously discussed. MT motioned to approve the Area Variance Application as submitted based on the five criteria above. SN seconded the motion and all approved. Craig Crist (CC) then stated that the determination should be redone in order that the motion to classify this action as a Type 2 under SEQRA, so no further analysis would be needed, could be made first. SN made the motion; seconded by MT and all approved. CC then asked that the motion to approve the Area Variance be reiterated. MT motioned to approve the Area Variance Application as submitted based on the five criteria above. SN seconded the motion and all approved. A brief discussion then ensued among ZBA members and CC. Monica Ryan added that while nothing would need to be done, it was good for the record to reflect it was classified as a Type 2.

Area Variance Application and Public Hearing

Donald Moore (Contractor)

Ian Osterlitz (Property Owner)

34 Boylan Road

Averill Park, NY 12018

R – Residential Zoning District

Tax Map #159.4-1-4.2

Lot Size: 1.0 acres

An Area Variance Application to construct a 28' x 40' single-story garage in the front yard setback.

Contractor Donald Moore presented on need for area variance for lowering the set back of a proposed 28'x40' garage in the front yard. Mr. Moore added that the proposed location was selected so it would be in the corner and hidden by trees; thus, not totally visible by other properties nor from the road. MT mentioned that the property is on Glass Lake. She further stated that she had done a drive by and noted the area was forested; thus, agreed that it did not seem that the garage would be visible. JB asked if there were any alternate areas to use for garage. Mr. Moore responded no as the front yard has the built-up septic system and the side was not big enough. JB asked about the location of the well. Mr. Moore replied that the well was located in the back corner by the edge of the woods thus very limited in areas for the proposed garage. At 7:20 pm, MT made a motion to open the Public Hearing; seconded by SN. As there was not public comment on the Area Variance Application, MT motioned to close the public hearing at 7:21 pm and seconded by JB. SN asked if the garage was to be attached to the house by breezeway or anything. Mr. Moore responded no and there would be a 12'

separation. SN commented that he was fully aware of the property including the location for the leach/septic field and felt the proposed location is the only feasible area. SN then asked if a second entrance would be put in and then utilize the proposed garage area as the main parking area. Mr. Moore responded yes as he would come off the private road with another driveway to access the front garage doors. SN then asked if the old area would also still be used for parking. Mr. Moore replied yes it would be used for parking on occasion and added that as it was all blacktop, he did not see a reason to tear it up. Monica Ryan asked for clarification on the setback of either 80' or 88'. MT stated she had also noted the discrepancy on the Area Variance Application. Mr. Moore responded that 88' was correct. SN asked how the water line to the well ran. DM responded straight and, if needed, would move it as he would not want to run it under the garage. MT then individually read the five criteria for ZBA members to discuss/comment on:

- (1)** whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
MT stated she did not believe so as the layout looked to be really hidden by trees and set back far enough not to be visible by a lot of properties. SN agreed and stated that he thought it would enhance the property a bit.
- (2)** whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
MT stated that she believed the proposed location was cut and dry as there was no alternative as explained by Mr. Moore. JN and SN agreed.
- (3)** whether the requested area variance is substantial;
MT stated that in her opinion, this project is not seen as substantial as the 88' was not seen as a large distance.
- (4)** whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
MT stated that it would be doubtful if this area variance would have any effect on the environment considering it would be a garage; thus, not viewed as an adverse impact. ZBA members agreed.
- (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 the property was recently purchased thus the lot was in this state upon purchase.

MT reiterated that the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider the evaluation of the 5 criteria previously discussed. MT made the motion to classify this action as a Type 2 under SEQRA so no further analysis is needed. SN seconded the motion and all approved. MT motioned to approve the Area Variance Application as submitted based on the five criteria above. JB seconded the motion and all approved.

Area Variance Application and Public Hearing

Michael Wager
311 Sheer Road
Averill Park, NY 12018
AR – Agriculture/Residential Zoning District

Tax Map #158.-1-16

Lot Size: 8 acres

An Area Variance Application to construct a 40' x 60' pole barn in the front yard setback.

Michael Wager presented and stated he is seeking an Area Variance for a proposed 40'x60' barn which would be 150' from right side of property and on the north side of driveway. Mr. Wager explained that the proposed location was chosen as the topography in other areas was quite steep. He further stated that while there was another location in the back of the property, that location would require approximately another 900' driveway in order to access it. Mr. Wager shared sample pictures stating it would be an agricultural barn which would fit in with the nature of the area. MT asked if locating the barn elsewhere would create a lot of excavation and grading. Mr. Wager agreed and added it would require another 880' of driveway and grading. He further stated that the proposed location is the best and easiest without effecting the environment or eliminating any of the hayfield. MT clarified that placement of the barn in another location would remove part of a hayfield for which Mr. Wager replied yes. JB clarified the alternate location as being in the back side of the house. Mr. Wager responded yes and added that it would be on the west side of his 8 acre property. MT clarified that the alternate location would not require a variance for which Mr. Wager agreed. SN commented that the alternate location would however require a super long driveway and he viewed the proposed location as a front field. Mr. Wager explained that the proposed location would have a small driveway off of the existing driveway and an aerial picture is reviewed for clarification. Geraldine Burger (GB) commented that Mr. Wager did not want to place the structure on the agricultural land. Mr. Wager agreed adding that it would require the building of a driveway and access during the winter would not be as easy as the proposed location. At 7:31 pm, MT opened the Public Hearing; seconded by JB. Doug Kelley stepped forward stating he was the next-door neighbor of Mr. Wager. Mr. Kelley explained that his driveway was parallel to the property line and had a couple of concerns. He asked if this was a setback variance. MT replied that it was a front setback variance. Mr. Kelley asked if the structure would be close to the road and whether it would impair any site distance. Mr. Wager stated absolutely not and site pictures were reviewed. Mr. Kelley raised the second question concerning drainage and explained how it is currently an issue. He mentioned a small swale behind the proposed location and explained how the water currently runs under his driveway into a small culvert pipe. He then asked if there was a drainage plan that might divert some of that water. Site plan pictures are reviewed and Mr. Wager responded that he would try his best and work to ensure no additional runoff. Mr. Kelley asked if there would be gutters and Mr. Wager responded that he could put gutters up and add dry wells to collect and divert the water. MT asked if Mr. Wager was in agreement to the gutters and two dry wells. Mr. Wager responded yes and added that he would also contact the County for any additional ideas on the drainage issue. Mr. Kelley asked if the structure would be used for any commercial purposes and Mr. Wager responded no, all agricultural. Mr. Kelley closed by stating that as long as the drainage issues would be addressed, he had no further concerns. As there were no other public comments, MT

motioned to close the Public Hearing at 7:35 pm and seconded by SN and all approved. As ZBA members did not have further questions, MT then individually read the five criteria for ZBA members to discuss/comment on:

- (1)** whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
MT stated that it was an agricultural area and the proposed structure would be an agricultural building; thus, would fit in with the context of the area with respect to the colors and type of structure. GB stated that she agreed.
- (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 restated applicant's reasons on request for Area Variance versus being achieved by some other method: topography too steep or too far in other locations; would result in loss of agricultural property and would require large amounts of excavating/grading for an additional driveway. MT then stated that the proposed location sounded reasonable as no alternative available. JB stated that he agreed.
- (3)** whether the requested area variance is substantial;
MT stated that in her opinion, this project is not seen as substantial as it would be 25% and fairly small.
- (4)** whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
MT reiterated the public comment concern for storm water drainage control. She added that with the agreement by the applicant to have gutters installed and drywells constructed resolved any environmental impacts related to the project.
- (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.
SN stated that he did not view it as self-created and MT agreed adding that this criteria was a consideration and not a major factor.

MT reiterated that the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider the evaluation of the 5 criteria previously discussed. MT made the motion to classify this action as a Type 2 under SEQRA so no further analysis is needed. SN seconded the motion and all approved. MT motioned to approve the Area Variance Application with one condition that the project be amended to include gutters and two drywells as stated during the meeting. Mr. Wager stated that he was in agreement. JB seconded the motion and all approved.

Area Variance Application

Neil VanBuren

5 Victor Lane

Averill Park, NY 12018

R – Residential Zoning District/Commercial Reuse Overlay Zoning District

Tax Map #148.3-2-46

Lot Size: .40 acres

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

Neil Van Buren presented and stated that he is seeking an Area Variance to build a garage in the front lawn which would be approximately 20-21' from the road; thus, too close based on the current zoning code. He further stated that the proposed location is the only area as the side lawn consisted of a pool behind the house and beyond that was drainage. Mr. Van Buren added that above the drainage area was an old foundation for which he was uncertain as to what it consisted of so preferred not to dig there. He added that area would also result in a large amount of excavation to access, would require a driveway and rerouting of the drainage area. Mr. Van Buren explained that the proposed location would place the garage ahead of the natural drainage area yet be just passed the front of the house and would allow him to work off of the existing blacktop driveway. He then shared pictures of the proposed garage and stated it would match the siding/trim of the house and be 24' wide x 26' deep. MT explained that a decision is needed on whether enough information has been obtained to schedule a public hearing. SN asked for clarification on the proposed location. The site plan map was reviewed with Mr. Van Buren. Mr. Wager stepped forward to further clarify pictures he had taken and stated the structure would start 22' from the front of the property line and meet the needed 10' away from the house. MT asked for clarification on the 22' and site pictures were reviewed and discussed. Mr. Wager recommended ZBA members do a site visit as there were stakes in the ground which marked the proposed set-up for the structure. MT stated she had stopped by however it was difficult to see the layout. SN motioned to set the Public Hearing for July 18; seconded by MT and all approved. MT asked Mr. Van Buren to provide pictures that include the stakes for use at the Public Hearing. She further explained that the pictures would be helpful as the proposed structure seemed to be close to the road thus could impair the neighbor's visibility when pulling onto the main road. Mr. Van Buren responded that neighbors would have visibility to the main roadway. SN asked if the home was accessed from Victor Lane to which Mr. Van Buren replied yes.

MEETING MINUTES – April 18, 2019 – JB motioned to accept the minutes as submitted. Seconded by MT and all approved.

MISCELLANEOUS – MT explained that there was a Resolution before them on the denial of the Daniel Holser Area Variance Application put forth by Craig Crist (CC). MT stated that, in her opinion, the Resolution was verbatim as it summarized the ZBA discussions and public's comments that had taken place. CC asked that all ZBA members take a few minutes to read the Resolution, if they had not done so already. MT added that while ZBA determinations are not usually incorporated into the meeting minutes, the denial of this Area Variance warranted the attached Resolution be recorded into the minutes. MT motioned to adopt the Resolution into the minutes; seconded by SN and JB was in favor. GB abstained due to having been absent at the Area Variance Public Hearing meeting.

ADJOURNMENT – GB motioned to close the meeting at 7:52 PM, seconded by MT and all approved to close the meeting.