

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
March 9, 2023**

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 7:00PM

MEMBERS PRESENT: Amy Lent
Scott A. Blair
Nancy Perry
Daniel Hogle
Craig Crist, Esq.

MEMBERS ABSENT:

OTHERS PRESENT: Kyle Zeh, Andrew Bulmer, Mary Ellen Trumbull, Michael & Maria Martin, Stacy & Peter Smith, William Glasser, Daniel Rounds

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

Melissa Toni (MT) explained the area variance and public hearing process for all present.

Area Variance Application and Public Hearing (con't)

Kyle Zeh (Applicant/Property Owner)
23 Old Route 66
Averill Park, NY 12018
HMU – Hamlet Mixed Use Zoning District

Tax Map #: 148.-3-1- 10

Lot Size: .32 acres

An Area Variance Application to exceed the maximum front yard setback for the build of a multifamily dwelling.

Kyle Zeh was present and summarized the project which had been initially presented at the January 12, 2023 meeting and again at the February 9th meeting which included a Public Hearing. MT stated that members of the Board had asked for some changes to the plans based on public comments that had been received at the February 9th meeting. Mr. Zeh summarized the project and explained the revisions to the plans to address the public comments. Nancy Perry (NP) stated that for the proposed fence, the nice side needed to face the neighbors to which Mr. Zeh responded that he understood. Scott Bendett (SB) asked if the jog that had previously existed for one of the boundary lines had been straightened. Mr. Zeh responded yes and added that the recent survey reflected that correction. Mr. Zeh stated that he had spoken with the neighbor (Daniel Rounds) regarding fence height and color, placement of lighting for the parking area as well as the concern regarding water runoff. He added that any lighting would be kept at 3' high along the backside of the fence. Mr. Zeh stated that the plans now reflected two dry wells in the proposed parking lot to catch the water runoff with guard drains connected to them.

MT noted that this meeting was a continuation of the Public Hearing and asked if there were any public comments. Daniel Rounds stated that he and Mr. Zeh had spoken a couple of times regarding the

proposed project. Mr. Rounds stated that an agreement had been made between them to meet at the site once it was cleaned up to hammer out the details. He added that Mr. Zeh had been very receptive which made him feel comfortable with the requested area variance. Craig Crist (CC) asked Mr. Rounds if a discussion had taken place which the Board may want to consider as a possible condition should the area variance be granted. The height of the fence was mentioned, the applicant stated that the proposed fence would be 6' high and would start where the retaining wall ended to which Mr. Rounds stated was fine. MT stated that overall, the retaining wall and fence would be 11' high at its highest peak on the applicant's side of the property.

With no further public comments, MT motioned to close the Public Hearing; seconded by Amy Lent (AL) and all approved. It was noted that the condition regarding the fence would be set as a condition if the variance were granted.

CC read the criteria considered by the Zoning Board of Appeals (ZBA) upon review of an area variance.

MT motioned to declare the Town of Sand Lake Zoning Board of Appeals as Lead Agency under SEQR; seconded by AL and all approved. MT motioned to classify the project as a Type II Action under SEQR; seconded by NP and all approved.

MT then individually covered each criterion:

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.*

The Board agreed that no undesirable change would be produced because of this project. The Board agreed that the decision was based upon the configuration of the lot along with concerns of the adjacent neighbor being resolved by design changes.

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.*

The Board agreed that there was not an alternative method to achieve the desired outcome based on the current configuration of the lot.

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

Board members agreed that the area variance being sought for a front yard setback of 113' versus the allowed maximum of 10' was substantial. As noted in #2 above, the configuration of the lot was taken into consideration.

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

Board members agreed that the proposed variance would not have an adverse effect or impact on the physical or environmental condition in the neighborhood or district. It was stated by the applicant that catch basins would be installed to direct the water runoff back towards the street; thus, be an improvement for the existing situation of standing water.

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.*

Board members agreed that, as with many of the requests before the ZBA, the difficulty was self-created as the applicant was aware of the lot layout at the time of ownership.

MT motioned to grant approval of the Area Variance for the multifamily dwelling to have a front yard setback of 113' versus the allowed maximum of 10' with the following conditions: 1) the structure be constructed per drawing plans dated 2/2/23; and 2) a 6' fence be installed on top of the retaining wall at the back of the property as on the drawing. The motion was seconded by AL and all approved.

Area Variance Application and Public Hearing

Andrew Bulmer (Applicant/Property Owner)
24 Stone Camp Way
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 170.2-1-4
Original Lot Size: 1.84 acres
New Lot: 1.0 Acres
Parent Lot: 0.84 acres

An area variance application for insufficient lot size and insufficient lot width associated with a proposed minor subdivision to create one new lot.

Andrew Bulmer was present and summarized the project which had been initially presented at the February 9, 2023 Zoning Board of Appeals (ZBA) meeting. Mr. Bulmer stated that they wished to subdivide their 1.84-acre parcel into a .84-acre lot and a 1-acre lot. Mr. Bulmer stated he had spoken with a neighbor across the way on Methodist Farm Road regarding proposed Lot 1 and added that an area variance was being sought for proposed Lot 2 to consist of .84 acres with 92.19' lot width.

MT noted the details for the requested area variances as: insufficient lot size of .84 acres versus required 1 acre and insufficient lot width of 92.19' versus the required 150'. It was also noted that the current lot conformed to the Zoning Code and the request to subdivide would create one conforming lot and the other a nonconforming lot.

With no further questions from the Board, MT motioned to open the public hearing at 7:28pm; seconded by NP and all approved.

Attorney Jonathan Tingley stated that he represented Ann Bower and Pat Simon who resided at 26 Stone Camp Way. Mr. Tingley summarized information from his email submission of a letter to the Planning Office dated March 9, 2023. He stated that his clients' request was for the ZBA to deny the current area variance requests. He noted, from his letter, that the applicant was on his 3-4th round of multiple area variance requests within the last three-year period for the same parcel. He added that some of those requests had been granted and others denied resulting in the applicant being able to construct a new single-family home on a conforming lot. He added the applicant now sought area variances to create a nonconforming lot and asked what the purpose or need was seeing as a home had been built; thus, there was not a need at this time but rather a personal want. Mr. Tingley added that for over three years the applicant's requests for area variances on this parcel were eroding at the Zoning Code.

Mr. Tingley then spoke of the criteria considered by the ZBA such as - What is the benefit to the applicant – the benefit here would be the applicant being able to get away with not complying. He reiterated that the applicant had his home and lot which was the intent of the 2017 Zoning Code. He then spoke of the criteria on detriment to community and added that this area of Crooked Lake had a traditional/historical development pattern along the lakeshore. He then referred to the aerial photo which showed that parcels between the lakeshore and Methodist Farm Road were kept vacant, yet the applicant wished to disrupt that and build a house where one had not been before; thus, would change the community/character. He then referred to his submission of an excerpt from the tax map that reflected 12 of 16 lots in the immediate neighborhood ran from lakeshore to Methodist Farm Road and added those lots had been created in that form prior to 1972 and the first Town Zoning Code adopted. Mr. Tingley stated that the ZBA was tasked with taking consideration of the precedential effect these variances would have on the neighborhood resulting in additional such requests in the area. He added that the detriment to the community outweighed the benefit to the applicant. Mr. Tingley referred to the applicant's application and noted that many of the responses were not full sentences and sometime just a phrase; however, did not reflect how the criteria/standards were being met. He referred to the criteria on undesirable change in the neighborhood and stated that as referenced for the reasons above, it would be a resounding yes.

Mr. Tingley referred to the criteria regarding another method to achieve the desired outcome and stated the applicant could feasibly do so by purchasing another conforming lot within the Town to construct a home for the daughter. He added that another option could have been that the applicant could have altogether purchased a different parcel three years ago that would have supported the building of two homes. Mr. Tingley spoke of the criteria on substantial and stated that in context, versus isolation, four rounds of variance applications in three years on one parcel by the same applicant for which four variances were granted and the latest requests would make six making it overall a substantial request. He added that Mr. Bulmer could have asked for all the variances in the beginning rather than piecemeal. He further added that in isolation, the ZBA had the authority to find the requested variances substantial and referred to court cases which determined a variance of 15% or more that has been held or deemed by a Zoning Board to be substantial. Mr. Tingley spoke on the criteria for adverse and environmental impacts to the neighborhood and stated that while the result would be another single-family home; however, by doing so it would change the character and development pattern/lot configuration of the neighborhood causing an adverse effect. He further stated that there was no concrete evidence that building another home with impervious surfaces would or would not have an adverse effect on the lake; thus, should be a valid concern to be addressed by the ZBA. Mr. Tingley covered the last criteria which was whether the alleged difficulty was self-created and stated that while not a determining factor found this request to be a more self-created hardship than in most cases as the applicant was able to build a home and now asked to create a nonconforming lot. Mr. Tingley then pointed out that the applicant had once served as a member of the Town Board; thus, should be more familiar with the zoning code than the average citizen and the ZBA should take that into consideration. He concluded that with all the information brought forth, the ZBA should conclude that the current variance requests must be denied.

Ann Bower and Pat Simon stepped forward and stated they resided at 26 Stone Camp Way. Ms. Simon stated they had moved here to retire and not spend so much time fighting such requests. She stated that had bought their camp in 2016 and the first time the applicant asked for variances, she and Ms. Bower had not lived here full-time as the camp was old and getting repaired. She explained for the 2019 public hearing they had written letters as well as the surrounding neighbors listing several concerns, yet the applicant had received all requested variances. She added she did not understand that and felt that their concerns were ignored. She stated that the applicant owned nearly 2-acres and yet had to build their home right on top of them, however now understood as the applicant now planned to subdivide and build another home. She stated that upon review of minutes from when variances were granted for the applicant in 2019, it was found that some statements made at that time by the applicant were untrue and was unsure as to how or who followed through on them. She then explained how the woods leading up to Methodist Farm Road help to protect privacy as well as noise from that road. Ms. Simon stated that the neighbors surrounding the subject property did not want to see the area variances granted. She explained that the Carrolls' wanted to be present at this this meeting to express their concerns however were away on vacation. Ms. Bower stated that the granted of an Area Variance should be for a unique circumstance and felt that all the variances granted previously to the Applicant was an abuse of the system.

Dan Callopy stated that he resided at 194 Methodist Farm Road. Mr. Callopy stated he had some concerns and the main one was that variances had been granted and not been followed. He also asked if the variance were to be granted and not followed by the applicant, then who is responsible. He noted that Ms. Bower and Simon had to hire a lawyer. Mr. Callopy stated that if these variances were to be granted and a problem arose, who would help them. He concluded by saying why had so many variances been granted and continued to be requested.

MT noted that written public comments had also been received from: Timothy Watchtel who was in support of the requests, Mr. Tingley's letter of March 9th and Barbara Smith – it was noted that all written

comments have been accepted as part of the record. NP wondered if the neighbors who resided on the other side of Methodist Farm Road (211, 197 & 181) had any issues with the request for variances.

Kathy Callopy stated that she resided at 194 Methodist Farm Road and noted that the applicant stated they had spoken with the Schutz' however those folks lived down the road and did not see how they would be affected at all as they would not see it. She added that the Wachtel's owned property however their home was located far up a driveway; thus, they would not see it either. She further explained that the Bradley's property did not border the parcel under discussion and believed they mainly lived in Florida at this time. She concluded that the concerns mentioned were from folks who directly bordered the subject property.

Pat Simon stepped forward to explain the layout of the folks mentioned by Ms. Callopy. NP asked how Ms. Simon and Ms. Bower would be affected. Ms. Simon stated that as the applicant planned to make it a family compound, most of the woods would be gone and more of their family would be at the lakefront. She added that once the lot was subdivided, it could be owned by anyone and not necessarily a member of the applicant's family or it could be rented out. MT noted that there had also been the concern of additional vehicle traffic on Saxby Way. Ms. Bower added that they were already affected due to the current traffic on Saxby Way, along with drainage and ice.

NP noted that one of the letters indicated that Mr. Bulmer had previously received special treatment on his requests as he had been serving as a member of the Town Board at the time. As she served as Town Supervisor during that time, she wanted to clarify the following: the Town Board has nothing to do with decisions made by the ZBA or the Planning Board. She added it was done that way on purpose as the Town Board members are elected and ZBA/Planning Board members are appointed; thus, separated from the pressures of politics. She further explained that upon hearing of the issues, a meeting involving the Town attorneys took place and the first decision made was to have the matter taken completely out of the hands of the Town of Sand Lake and given to the Town of Poestenkill for Code Compliance and Building Inspection purposes; thus, no taint in Sand Lake's Town Board on the matter. She added therefore there had not been any special preference given to the applicant nor had she ever asked the ZBA/PB how something was proceeding. MT thanked NP for the clarification and added that based on the Town of Poestenkill's findings, corrective action had been taken by the applicant to which NP agreed.

Riley Bulmer stated she was the daughter of the applicants previously referred to in the discussion earlier. She stated that she had become a nurse approximately three years ago and was now at the point where she wished to build a home on the proposed 1-acre lot to start a family and be near her parents. She stated that she does drive a car for work and groceries and added that her car would be at her parents when she visited. She further stated that one thing guaranteed in life was constant change such as the Board mentioned regarding the updated Zoning Codes. She closed by saying that she would love to have the opportunity to build this home at this location.

MT motioned to close the Public Hearing at 8:04pm; seconded by Daniel Hogle (DH) and all approved. MT motioned to declare the Town of Sand Lake as Lead Agency for SEQR and classified the project as a Type 2 under SEQR; seconded by AL and all approved.

MT then individually covered each criterion:

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.*

The Board agreed that a lot of public comments had been received from adjacent property owners and, in their opinion, there would be an undesirable change to the character of the neighborhood as

the overall project would take away the beauty and bucolic essence of the area. It was noted that in SEQR terms, an undesirable change to the character of the neighborhood was typically determined by the neighbors who lived in the immediate/adjacent area of the project. Additionally, the properties surrounding the project had not built additional homes nor asked for non-conforming lots to be created for that purpose.

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.*

The Board agreed that there was an alternative method to achieve the desired outcome. It was noted that the ZBA had seen this a lot and typically an alternative method could be done via a smaller structure or place the structure in another location. It was noted that the overall project to build another home could be done on a different lot.

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

It was noted that there have been case laws in which an area variance request for 15% or greater is substantial. As such, Board members agreed that the area variance being sought was considered substantial.

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

Board members agreed that the proposed variance would have an adverse effect or impact on the physical or environmental condition in the neighborhood or district. MT noted that there were two variances being sought: one for lot size and the other for road frontage. She stated that the physical/environmental conditions of the neighborhood included such things as water quality, wildlife habitat and effects of impervious surface as it pertained to certain areas. It was noted that the overall project involved the construction of a home which could potentially impact wildlife habitat as well as the lake's water quality due to an increase of the impervious surface it would create.

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.*

Board members agreed that, as with many of the requests before the ZBA, the difficulty was self-created as the applicant was aware of the lot layout at the time of ownership.

Based on the discussion and public comments received, MT motioned to deny the Area Variance Application; seconded by NP and approved by all.

Area Variance Application and Public Hearing

Edward Francis (Applicant/Property Owner)
78 Sheer Road
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 158.-2-50
Original Lot Size: 9,542 +/- acres

An area variance application for insufficient side yard setbacks for construction of a single-family dwelling.

Surveyor William Glasser was present. CC noted that the Board had not previously deemed the application complete and Public Hearing had been inadvertently posted. He added that the Board would consider whether the application was complete and move to continue the public hearing for next month's meeting.

MT reiterated that the ZBA procedure for this meeting would be to determine if the application could be considered complete. Mr. Glasser summarized the project which had been initially presented at the February 9th meeting. Mr. Glasser explained that there was a letter from Barber Engineering that stated a septic system could probably be done on the lot, however, would be up to the Health Department for

their approval. He added that if the Health Department did not approve then the lot could not be built on.

MT stated that as the lot was very small, the Board had been concerned about the feasibility of a septic system. She referred to the letter from the engineer who had done a site visit and believed, in their opinion, that if conditions allowed there was adequate spacing for a conventional style septic system on the lot. The letter also noted that should there be issues, then a mount/fill style septic system would be required and designed to fit adequately. MT asked if the Board members had any other questions now that the concern for the well and septic system were addressed in the letter from Barber Engineering and added that the neighbor's well would be at a proper distance. SB stated that while the engineering firm was on board, he wanted to ensure that if the Health Dept. did not approve the septic system, that the Town was not held liable. NP stated that sometimes with local government, the County could go along with what the Town had approved of as she had seen that type of scenario while working with the State of NY. CC stated the Board could make any approval contingent upon the ability to gain all necessary outside of approvals. He added that the surveyor may also want to see what the County's position was for the well and septic system. Mr. Glasser stated that the applicant had an engineer's report, and it was most likely that the County would not address it without final plans being submitted. He stated that the applicant was before the Board was to seek approval on the requested side yard setbacks and did not see where the septic system had anything to do with Zoning issues. MT responded that the Board wanted to ensure they were approving a buildable lot to which NP agreed. Mr. Glasser reiterated that it would be the County Health Dept. who would have jurisdiction to approve or deny the septic system and well. He explained that the applicant did not want to further finalize plans and spend additional monies if the side yard setbacks requests were denied. CC stated that in the ZBA making their decision, in no way meant that the Town was telling the County what to do. The Board went over the survey once again in relation to the layout for the applicant as well as the neighbor. Mr. Glasser stated that a similar size lot existed across the street.

MT reiterated that the ZBA role was to determine whether the application was complete. She asked Board members if they wanted to have Mr. Glasser at least approach the County. Mr. Glasser stated that he would have to have the engineer do that. MT replied that was fine and maybe some sort of response would be received to which Board members agreed. Mr. Glasser stated he would ask them to do so. He added that to ask for anything additional would require a full-blown submission. NP asked if the application could be deemed complete while awaiting to hear from the County and let the Public Hearing continue. CC stated the motion would be to ratify and reauthorize the continuation of the Public Hearing to be held next month.

As the Public Hearing had been inadvertently posted, a member of the public asked if they could speak which was permitted. Stacey Smith stated she was an adjacent neighbor who resided at 74 Sheer Road. Ms. Smith stated she realized how small the lot under discussion was. She added that years ago an elderly man lived there without a proper septic system. Ms. Smith stated that her concern was for the location of the applicant's septic system in relation to where her well existed and wondered if there would be any contamination. SB explained that the Health Dept. would require it to be 5' above ground water and rock which was the purpose for digging test holes as fill may need to be brought in. Mr. Glasser added that other septic systems could be used to which SB added such as an Eljen system which takes up the least amount of space. Ms. Smith stated that they utilized the side yard adjacent to where the applicant would construct a home and if the variances were granted, that home would end up being right on top of them. MT agreed that it would be tight. Mr. Glasser stated that the applicant had centered the proposed home on the lot. Ms. Smith stated why couldn't the proposed home be moved closer to the other side of the lot as no home existed and it was just woods. NP stated that the purchase had been done via auction, site unseen. Mr. Glasser stated the proposed two-bedroom home would be for the applicant's daughter.

Ms. Smith stated that there would not be a guarantee of how many may live there should it be sold. MT stated that potentially a requirement of a fence or some sort of screening could be conditioned. MT viewed the layout regarding the other side of the applicant's property as mentioned by Ms. Smith and noted that it would only be mere feet for the shift of the proposed home. She added that the other issue would be that the applicant would need to have ladder access on that side of the home. Ms. Smith then spoke of the low water table. She explained that they had put in a new well when they moved in and did not have any issues. She further explained that since that time several families have moved in around their property which has caused them to run out of water; thus, was concerned about another home being built and what that well would do for the water table in the area. She stated this was noticed when a hose was left on with a small drip of water running out of it and when they arrived home, they had no water and had to wait until morning for it to recover. The layout was reviewed again and found that another setup/location, such as a flip of the well and septic would not be feasible. MT stated that this was one of the tough decisions to be seen because if the area variance is denied, it is basically determining the lot to be an unbuilding lot. NP stated that whether it was an unbuildable lot was what it came down to. Ms. Smith shared her survey which was done a while back and stated she believed someone had made a bad decision years ago to give someone a lot for a trailer or what not. MT stated that is why there is now a Zoning Code to which Ms. Smith agreed. Mr. Glasser restated that he would contact the engineering company to see if they could obtain something from the County. MT stated she was concerned about the low water table that was mentioned and asked if there was any resource that could speak on that behalf. It was noted that there was not and mentioned that many times water that is obtained could be gathered from anywhere in a 100' circumference. NP noted that Ms. Smith did have a legitimate point in the notice of decreased water; thus, why would the ZBA potentially add to that issue. It was noted that the ZBA did not know the root cause for the decline in the unavailability of well water.

MT motioned to deem the application complete contingent on the ZBA hearing from the County on their opinion; seconded by DH and all approved. MT motioned to continue the Public Hearing as well as ratify and reaffirm the sending of the notices on the public hearing; seconded by DH and all approved.

Area Variance Application for Maria Martin

Michael and Maria Martin (Applicant/Property Owners)
32 Glen Royal Drive
Averill Park, NY 12018
R - Residential Zoning District

Tax Map #: 169.2-2-14
Original Lot Size: 5.29 acres
Proposed Lot Size: .26 acres

An Area Variance application for insufficient lot size and insufficient lot width associated with a proposed boundary line adjustment.

Maria Martin was present and stated that she wished to do a Boundary Line Adjustment to detach 5 acres from her lot of primary residence, leaving it with .26 acres and road frontage of 75' which was how it existed approximately 10 years ago. Ms. Martin stated that the 5 acres would then be attached to a .10-acre lot which she had recently acquired to gain road frontage. She explained she had attached the 5-acre lot to her primary residential lot per the advice of an attorney who had indicated that the newly acquired 5-acre lot was not buildable. She further stated that the 5+ acre lot would be for her daughter to build a home. Ms. Martin stated she wished to bring her residential lot back to the way it once existed, which was .26 acres with 75' of road frontage. She added that the requested lot size and lot width would match the surrounding lots in the neighborhood. Ms. Martin stated that there would not be any additional structures built on the .26-acre lot as her home and a garage already existed. The survey map for the layout was viewed and discussed for clarity.

Minutes 3/9/23 ZBA

MT motioned to deem the application complete; seconded by DH and all approved. MT motioned to schedule the Public Hearing for April 13, 2023 at 7:00pm; seconded by NP and all approved.

DRAFT RESOLUTION FOR APPROVAL

Area Variance for William Macey

MT motioned to waive the full reading of the draft Resolution; seconded by DH and all approved.

MT motioned to approve the Resolution in its entirety; seconded by DH and all approved.

ADJOURNMENT - MT motioned to adjourn the meeting at 8:46pm; seconded by AL and all approved.