

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
May 19, 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: Monica Ryan, Nancy Perry, John Macri, Diane Hunt, Brian Hunt, Ed Patanian, Paul Splain, Barbara Martinage, Kathy Wolf, Dan Wolf, Jim Smiel, James Litrell, Ken Gnirke and Sandy Gnirke.

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

ITEM 1. Area Variance Application and Public Hearing

Craig D. Apple, Sr.

Tax Map #158.4-5-19

1222 Burden Lake Road

Averill Park, NY 12018

An Application for an Area Variance for a side yard setback of seven (7) feet to accommodate new deck on a residential dwelling.

Mr. Apple (CA) explained the purchase of this key-hole lot on the 2nd Burden Lake approximately one year ago. CA stated he believed the .15 acre property does not fit within the current Town codes and setbacks. CA explained his property faces water on two sides, with the south side facing a channel with a small island on other side of channel. His proposed deck would be 8' tall and 24' long on side of house, leaving 7' to shoreline. There would be no impact to neighbor views as the deck would only be visible from the water. The deck would be supported by pylons that would not be touching the water. Some ZBA members stated they had done a site visit of the property.

Judith Breselor (JB) opened the Public Hearing at 7:02 PM and invited anyone from the public to speak regarding the proposed deck project. Sandy Gnirke, 11 Glenwood Terrace, Averill Park, spoke positively. She stated that as a homeowner, Mr. Apple should be allowed to put a deck on his home. Nancy Perry, as Chairwoman for the Sand Lake Planning Board, advised the ZBA that the Planning Board had met on May 18, 2016 regarding Mr. Apple's deck project. Nancy Perry stated the Planning Board had made a positive recommendation to the ZBA for the Area Variance Application and considered the Scenic Preservation Application and made it contingent upon the ZBA's decision on the Area Variance Application. JB closed the Public Hearing at 7:04 PM.

JB asked for discussion among the ZBA. Geraldine Burger (GB) stated she read Mr. Apple's proposal and stated that the composite decking planned is a good precaution for the lake and the piers planned are the least intrusive to the environment on the lake. Scott Bendett (SB) stated other ZBA decisions in the past have had property even closer to the lake.

JB explained to Mr. Apple that ZBA approval of area variances is a balancing act. The ZBA must weigh several factors into their decisions. JB read through the factors with the ZBA and Mr. Apple as follows:

- Can the benefit be achieved in another way – no.
- Does the action pose an undesirable change in the character of the neighborhood – no it would not be a detriment to the other properties.
- Is the request substantial – it is.
- Will it have an adverse physical or environmental impact – no
- Is alleged difficulty self-created – yes it is, but this is where there is a balancing act. JB stated there are no plans for an addition to the house or foundation to be poured.

JB asked the ZBA if there were any other questions and whether someone would want to make a SEQR determination. GB motioned a Type 2 SEQR determination and SB seconded the motion with it being unanimously approved. JB stated the project would not have an adverse environmental impact. SB motioned to approve the Area Variance Application, Jeb Bond seconded the motion and it was unanimously approved.

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

An Application for a Special Exception for commercial excavation as part of a site regrading in an A-1 Zoning District.

JB acknowledged that Edward Patanian (EJP) was not in attendance at the meeting. She raised concern about EJP possibly being confused that the meeting didn't start until 7:30 PM.

Lawrence Howard (LH) advised JB that she could open the Public Hearing without EJP's attendance, but his Special Exception Application could not be addressed unless he was there. JB opened the Public Hearing at 7:09 PM.

James Litrell, 10 Glenwood Terrace in Pond Hollow Estates, Averill Park, stated his house was built by EJP and asked if this is the same parcel of land as Pond Hollow Estates. JB explained that the property is the same parcel of land that EJP has been mining since 1988. His permit expired and EJP had to apply to DEC for a new mining permit. Melissa Toni (MT) explained that the DEC changed its old laws. DEC did not require a mining permit at that time (1988); it was being mined under a "use of excavation materials from that property" for the construction of Pond Hollow Estates. Mr. Litrell stated again that he lived in Pond Hollow Estates and never had noise before, but now he was going to have noise from trucks rumbling from 7:30 in the morning till 5:00 each night. Mr. Litrell referenced his Pond Hollow Estates rules and regulations agreement with EJP and that action such as EJP is now taking should not be allowed. The rules and regs state that nothing shall be disturbed at all. If EJP is a member of Pond Hollow it says nothing should be disturbed. JB stated he is not doing anything different than he has before. Mr. Litrell stated according to documents, EJP is removing trees by himself. JB stated EJP wasn't present to bring him up to address this and she just wanted public comment. Mr. Litrell then asked why the Town is allowing all this mining. JB stated the DEC issues mining permits and oversees mining, not the Town. She said that the ZBA has met with EJP at least two to three times and EJP has agreed to all conditions laid out by DEC and the Town. Mr. Litrell asked what about what the neighborhood wanted. He stated he did not know whether it was just coincidence, but since EJP has been digging back there his water is changing- it tastes horrible and he has no more water pressure. MT told Mr. Litrell that he does have a say and the ZBA wants to hear from the public. Lastly Mr. Litrell stated it is hard to sell houses in Pond Hollow and with all the noise from the mines (especially EJP's), it will be difficult to sell houses throughout the community. JB asked for comments from other interested parties.

Kathy Wolf, 2 Pond Hollow Road addressed the ZBA. She claimed starting at 7:30 AM, 30 trucks per day pass her house every 10 minutes. Her Pond Hollow agreement states nothing was to be disturbed. You can't have fence/pool/ATV according to her deed and all deeds in Pond Hollow. JB asked Ms. Wolf if EJP is doing more than six trips per day. She answered yes, stating she has counted other trucks too, but specifically EJP's. She stated she has spoken with EJP and he assured her it was going to stop after he puts in his parking lot, but she did not believe that. Ms. Wolf asked what this Special Exception would do for EJP if he is approved. JB stated EJP is granted a permit from DEC who controls mining. JB stated the Special Exception would allow him to do what he has been doing in the past. Ms. Wolf claimed that what EJP is doing now is different from the past.

Jim Smiel, 5 Pond Hollow Road asked the ZBA what Pond Hollow was zoned for. It was determined that Pond Hollow was zoned A-1. MT read A-1 zoning (agricultural/residential) is to delineate areas for agriculture appropriate for agricultural purposes and for low density residential uses and to preserve the integrity of such areas for such purposes. Mr. Smiel

explained his concern for property values. He stated he wanted the zoning to be changed for Pond Hollow to Residential. Agricultural zoning allows to mine. JB stated the purpose of the Public Hearing was not to address zoning, only the Special Exception for a use that can occur with restrictions. Mr. Smiel then stated that the ZBA could deny the Special Exception. Lawrence Howard (LH) stated a Special Exception is a permitted use in the district and requires the ZBA to approve it unlike other permitted uses which would just require a building permit. The ZBA would have to have exceptional reasons to deny a permitted use in the district. JB stated EJP is allowed to do this with stipulations and EJP has agreed to those stipulations. Mr. Smiel again revisited property value fears. JB stated again that EJP's current mining plan is a permitted use. Mr. Smiel stated he moved to Pond Hollow ten years ago and that he hasn't experienced problems with EJP mining activities to this point. JB stated EJP has continued to mine the property the same as he has over the years.

JB noted that EJP had arrived at the Public Hearing and paused discussion at 7:23 PM. EJP apologized for being late stating that he thought the meeting started at 7:30 PM. JB and EJP discussed the fact that he has appeared before the ZBA on two separate occasions over the past several months to discuss the Special Exception Application. JB asked EJP to explain the history of his mining activities at Lot 11R Pond Hollow since 1988 and what is expected to change. EJP stated he purchased 18 acres in 1986. He went before Planning Board to gain approval to run his business on the lot and build a garage and storage buildings around 1989. EJP explained that there was a large ridge in there of unusable land and was given an exception from DEC in 1988 to regrade site and also obtained wetland permits. EJP explained he used/uses the product mined to build subdivisions including Pond Hollow and stated all Pond Hollow deeds reference such mining activities. EJP explained he has been doing slow-paced mining for other subdivisions such as Forest Glen and Marie Heights. Some of this ridge still remains on Lot 11R. He explained that in the fall of 2015 DEC contacted him to gain a mining permit. JB confirmed that EJP has received DEC approval for his mining permit. EJP showed his mining plan map. He stated he has been and is running a slow paced, one truck operation. Scott Bendett (SB) asked EJP if his truck is marked with his name and EJP answered yes. JB addressed the stipulations previously agreed to between the ZBA and EJP in March 2016; one trip per hour/six trips per day/annual cap of 25,000 cyds per year. EJP stated he believed the language was an "average" of one trip per hour. JB asked if that is how he is running the mining operation now. He stated the truck trips to and from Lot 11R to Westfall Village could run on average 40 minutes to an hour and when the parking lot is built in Westfall Village and in the winter, there will be no trucks running. JB confirmed that no more than 5 acres of land shall be mined at one time. EJP added that when the original plans were approved in 1988, he was allowed to move his mining traffic through Pond Hollow. Since then he purchased additional land off Garner Road and created a new road to eliminate the need to go through Pond Hollow. JB confirmed that EJP was not traveling through Pond Hollow and no mining was being done before 7:30 AM and 5:00 PM. JB invited questions from the ZBA. Jeb Bond (JB) asked if anyone else was hauling out of his mine and EJP stated no.

JB reopened discussion at the Public Hearing at 7:29 PM. Mr. Paul Splain, 27 Garner Road asked for the definition of "commercial excavation." MT explained it is a NYS DEC definition.

LH stated that Town of Sand Lake code does not define it. Mr. Splain stated this was a “new term” and was it the same as mining. LH answered that commercial extraction mining and commercial excavation are the same. JB stated that when DEC granted the mining permit, they did it under the same terms as EJP has been doing since 1988. Mr. Splain stated that commercial excavation is on EJP’s Special Exception Application and it is not in the Town’s zoning code. JB confirmed the term means “mining.” Mr. Splain explained his questioning is related to making sure the new term of commercial excavation is covered by the current zoning. Mr. Splain asked the significance of the change of address of Lot 11R to 15 Garner Road. EJP explained he is doing solar panels on the property and Rensselaer County changed the address. Monica Ryan (MR) explained that the address of the property has changed several times as the previous address of 13 Garner Road has been used by other property. JB explained that the address changes are required by Rensselaer County for 911 emergency purposes and now the address has changed to 10 EJP Way. Mr. Splain then stated his property was completely surrounded by EJP’s mining property and proposed that southbound truck traffic go out Hemlock Circle through Pond Hollow and northbound traffic go out EJP Way. Lastly, Mr. Splain stated that he has no objection to the way EJP worked the mining before, but if mining increases with more truck traffic, he does object.

Dan Wolf, 2 Pond Hollow Road stated his house is on the corner of Pond Hollow Road and Garner Road so he experiences all the traffic, with trucks passing every 10 to 15 minutes all day. JB asked if they were all EJP trucks? Mr. Wolf stated the majority are EJP trucks and also Blair Construction. He asked when the ZBA was going to decide the Application. JB stated the purpose of the Public Hearing was to hear comments from the public.

Barbara Martinage (BM) from Glenwood Circle in Pond Hollow, stated she resented the letter she received in her mailbox with a hand-written note alerting her to the ZBA 5/19 Public Hearing. JB stated she was not aware of the letter being referenced. BM stated that she contacted Nancy Baker in DEC and prepared a list a questions (which she passed to the ZBA) asking that the questions be addressed. She asked the ZBA to honor that the Public Hearing would be left open until the next meeting so she can receive the answers to her questions and FOILs. BM called attention to the original proposal which discussed “borrowed period excavation” and had nothing to do with mining. That language covers only mining for use in the original development. BM raised questions such as: how is he paying taxes on lot (stating it is important to the discussion because EJP states the property is residentially zoned while he running a business there) and asked the ZBA to look at the permit itself (does the Special Exception allow for the storage of gas tanks on property and run his construction business in there).

JB, LH and ZBA members discussed next steps and leaving the Public Hearing open until the next meeting. All were in favor to leave the Public Hearing open. JB advised EJP that he would be asked additional questions in the future. The additional time would allow for further review of the Application and further comment from the public.

EJP asked to speak again. He addressed the room stating that he is running the same operation that he has been running since 1988. He stated that as he built his subdivisions over the years, the intensity of mining increases and then stops when the subdivision is completed. His current operation is nothing new. He runs a low-impact, slow-paced operation for his subdivision use only. He is making sure his materials last.

Jim Smiel asked to speak again and stated he did not know what occurred prior to his arrival in the neighborhood ten years ago. Mr. Smiel said that if all EJP is going to do is the same mining he has done over past ten years, he would be OK with it. He said he just feared the mining would come through Pond Hollow. JB stated this is EJP's third appearance at the ZBA with many questions raised to protect the community and DEC allows the activities with the mining permit. Mr. Smiel stated there was fear among the residents "fear mongering" and now he (and other residents) have more information as a result of the Public Hearing. He stated they now just need to monitor the traffic and protect their property investments. He stated his initial fear was that it would be another large Troy Sand and Gravel mining operation.

Ms. Wolf again asked to speak. She stated that there has been a change in the volume of trucks and invited the ZBA to come to her property and witness it for themselves.

Jim Litrell asked to speak again. He stated he was confused as to the number of acres being mined. He stated he received a letter from the Town that says it is two acres. JB questioned whether the Town sent the letter. Mr. Litrell stated he received the letter signed by all the Town officials and that it came stamped and addressed to his residence. It wasn't just stuffed in his mailbox. LH explained that the letter was sent from the Town to the DEC and Mr. Litrell again asked how he received the letter. JB invited Councilman Steve Beebe to address the letter. Steve Beebe explained that the letter was not sent to Pond Hollow residents by the Town. JB explained that current Town zoning allows the mining as outlined. MT addressed Mr. Litrell's question regarding the number of acres allowed for mining. She stated it is a 3.8 acre lot which DEC has allowed 2 acres to be at maximum at a given time. 3.8 acres is the maximum. JB reminded Mr. Litrell that EJP has been mining this area for years. Mr. Litrell stated he has been moving dirt; now he is going to mine. He stated that there are a lot of trucks lately which he isn't really impacted by, but has concerns that there is nothing in writing that prevents EJP trucks from coming through Pond Hollow. JB continued to stress that the DEC allows the mining within the Town under the present zoning. The ZBA has asked EJP if he agrees to the Town's stipulations for such mining and EJP has agreed to such stipulations. Mr. Litrell brought up one of the stipulations regarding all equipment and vehicles associated with the operation shall be equipped with exhaust systems that limit decibel output to the same or lower levels than that of original equipment factory exhausts of same. He asked if the equipment was being monitored. He asked how DEC or the ZBA make any decisions without living in the neighborhood. JB stated the EJP would be fined by the DEC if he does not comply. Mr. Litrell asked if he could share his deed restrictions with the DEC. LH stated that private deed restrictions are out of the Town's and DEC's jurisdiction. Mr. Litrell threatened legal action against the Town/DEC/EJP.

Ms. Wolf again asked how to get the DEC to enforce the one truck per hour restriction. JB reiterated the residents' concerns, stating the ZBA has met with EJP approximately three times regarding the stipulations. Ms. Wolf asked if the Zoning Officer could enforce such stipulations. LH answered yes, if the Special Exception Application was approved by the ZBA.

Barbara Martinage asked if she could expect answers to the questions she provided to the ZBA. JB answered that she hadn't had an opportunity to review such questions, but felt that some of them could not be answered by the ZBA.

JB reminded everyone that the Public Hearing would remain open on this subject until the next ZBA meeting on June 16, 2016.

MINUTES

SB motioned to approve the March 17, 2016 minutes and MT seconded the motion and minutes were unanimously approved.

ADJOURNMENT

SB motioned to adjourn the ZBA meeting at 8:05 PM and MT seconded the motion. Meeting was adjourned.