

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
November 12, 2020**

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 7:01 PM
- MEMBERS PRESENT: Scott Bendett
Geraldine Burger
Amy Lent
Craig Crist, Esq.
- MEMBERS ABSENT: Wayne Gendron
- OTHERS PRESENT: Mary Jane Tifft, Eric Dahl, Malcolm McPherson, Walter Scheeren, Shannon Scheeren, Mary Reiniger, Michael Bedard, Monica Ryan (Town Planner)
- RECORDING CLERK: Laura Fedoreshenko, Clerk for Planning Board and ZBA

Area Variance Application and Public Hearing

Mary Jane Tifft
26 Bears Head Road
Sand Lake, NY 12153

RR – Rural Residential Zoning District

An area variance application regarding insufficient lot frontage for one lot of a proposed two-lot Subdivision.

Tax Map # 159.-2-2.2
Original Lot Size: 8.8 acres
Proposed Lot 1: 3.05 acres
Proposed Lot 2: 5.03 acres

Melissa Toni (MT) explained the Public Hearing process. Mary Jane Tifft was present and summarized the project which had been initially presented at the Zoning Board of Appeals (ZBA) meeting on October 15, 2020. MT explained that the ZBA had asked the Planning Board for a Recommendation on the requested Area Variance. She added that the project was then presented at the PB meeting on October 21, 2020 and they provided a positive Recommendation to the ZBA with the following condition: as the accessory structure for Lot 1 will have no primary structure on it until the planned residential dwelling is built, it is recommended that a time limit be set for obtaining a building permit for the residential dwelling (e.g., two years). Ms. Tifft stated that for proposed Lot 1, her step-daughter intended to purchase and build a house within a two-year timeframe in order that the existing barn would then have a primary residence. MT explained that the proposed Lot 2 would need an Area Variance for insufficient lot width to which Ms. Tifft agreed. MT added that while Ms. Tifft owned an adjacent lot, no lot width could be taken from it as it would then be under the required 3-acres. Ms. Tifft stated that as she owned those parcels, no one else would be impacted. The revised survey map was reviewed in regards to the line drawn for the proposed minor subdivision. MT asked whereabouts a house may be built on proposed Lot 1. Ms. Tifft replied that it would front Route 43 however not accessed there due to a steep incline; thus, would be accessed by the barn. MT explained that the ZBA looks for possible options in order to remove the need for an Area Variance and the survey map was reviewed again. With no further questions from the Board members, MT motioned to open the Public Hearing at 7:14pm; seconded by Amy Lent (AL) and all approved. With

no public written or online comments received, MT motioned to close the Public Hearing at 7:14pm; seconded by Scott Bendett (SB) and all approved. MT asked Ms. Tiff her thoughts about the timeframe of 2 years to build a primary residence on Lot 1 so the accessory structure (barn) would not stand alone on the parcel. Ms. Tiff replied that as soon as the step-daughter sold the nearby lot, she would then buy proposed Lot 1 and begin building; thus, imagined it would be within a two-year timeframe. MT stated that Lot 2 needed an Area Variance of 19' for deficient lot width and it was clarified that it would be conditioned on a building permit for a primary residence being pulled within 2-years and that the condition would be part of the Planning Board consideration for the Minor Subdivision Application.

MT then went over the criteria that ZBA members were to consider when making a determination on an Area Variance Application:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
MT, SB, AL and Geraldine Burger (GB) stated they did not see any undesirable change or detriment to nearby properties.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
MT stated that the property was reviewed/discussed and there were no other options to which SB agreed.
3. Whether the requested area variance is substantial.
MT stated that the requested Area Variance was not seen as substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.
GB stated she did not believe the request would have an adverse effect or impact to which AL 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 a majority of the applications received had been self-created and was the nature of the applications.

Ms. Ryan stated that the PB had done SEQR as part of the Minor Subdivision Application. MT motioned to accept the coordinated review with the PB as the Lead Agency under SEQR; seconded by SB and all approved. MT then motioned to approve the requested variance of 19' for lot width for Lot 2 and to also condition back to the PB that the building permit be pulled for a primary residence on proposed Lot 1 within a 2-years. The motion was seconded by AL and all approved.

Area Variance Application and Public Hearing

Eric and Mary Dahl (applicant)
Devin and Carolyn Lander (property owner)
9 Dahl Way
Averill Park, NY 12018
R – Residential Zoning District

Tax Map # 147.1-2-10.121

Original Lot Size: 10.77 acres
Proposed Lot 1: 2.01 acres
Proposed Lot 2: 8.76 acres

An area variance application regarding insufficient lot frontage for the proposed lots in a two-lot Subdivision.

Attorney Malcolm McPherson was present to represent the Dahl's proposed project. Mr. McPherson summarized the project that had been initially presented at the ZBA meeting of October 15, 2020. Mr. McPherson explained that the ZBA had asked the Planning Board for a Recommendation on the requested Area Variance. He added there were two PB meetings (Oct. 21 and Nov. 4) as that Board wanted to

perform a site visit prior to issuing a Recommendation as they had been concerned about grade for a driveway to Lot 2. He added that at the Nov. 4 meeting, the PB approved and stated a positive Recommendation would be provided to the ZBA. He explained that for proposed Lot 1 the access off of Route 351, via a deeded easement, would not change with or without the Minor Subdivision being done. He added that access existed for the proposed Lot 2 off Fisher Road. Mr. McPherson added that a buyer was lined up for proposed Lot 2; however, was not aware of the timing on a build. MT stated that it appeared from the survey map that the front of Lot 2 was 50' at Fisher Road. Mr. McPherson agreed and stated a partial driveway existed for another house on Fisher Road. He added that Arthur Herman thought a driveway to the proposed Lot 2 would be doable when he had walked the area during the site visit performed for the PB. Ms. Ryan clarified for GB that Lot 2 had 50' of road frontage and the Zoning Code required 150'; thus, a variance of 100 would be needed. Ms. Ryan stated while the Zoning Code had existed, there had been a prior approval of some nature, in past years, that initially allowed the original scenario/lot to be created. MT stated that the proposed project would not make the lots more non-conforming.

MT motioned to open the Public Hearing at 7:40pm; seconded by SB and all approved. Mary Reiniger of 15 Fisher Road stated that the back of proposed Lot 2 off Fisher Road was a large piece of property; thus, asked if it would be for two lots and number of houses proposed as their concern was traffic. MT replied that the application before them was for one single family residence on Lot 2. Mr. McPherson agreed and added that anything additional would require further approvals. Ms. Ryan pointed out that anything additional for Lot 2 would require an actual road and a significant review. A discussion ensued on what the plan would be for the driveway off Fisher Road. Michael Bedard of 19 Fisher Road commented that while not opposed to the project, he wanted to ensure that he would still be able to access his house as the easement goes across Fisher Road. He added that while he also had access via Tollgate Road, it only consisted of 15'; thus, not feasible. Mr. McPherson stated he was not aware of any such plans to remove that easement and believed that Mr. Bedard had a deeded easement. Mr. McPherson added that he believed the plan for the driveway to Lot 2 would go straight in from what existed. Craig Crist (CC) stated that the ZBA would not provide any opinion on matters between neighboring properties. MT read the written public comments of opposition submitted by Karen Cardamone of 7 Chaundray Lane and Timothy & Traci Raymond of 6 Chaundray Lane (attached). Ms. Ryan indicated that she also had a phone conversation with Ms. Cardamone earlier in the day. AL stated that it sounded like both commenters were under the impression that two new lots were being created versus an existing lot and one additional lot being created. With no further public comments, MT motioned to close the Public Hearing at 7:58 pm; seconded by AL and all approved.

MT stated that it sounded like there may be a water issue in the area and noted the concern for adding to the building intensity had been brought up. She noted that the application had not included information about where future buildings/structures would be placed or what the setbacks would be. MT stated that there were three options before the ZBA: approve with or without conditions, deny or ask for more information on the building envelope to include things such as the septic, well and setbacks. GB stated she was in agreement with the third option. SB commented that asking for such information seemed intrusive considering Lot 2 would be 8-acres. Mr. McPherson agreed and stated that his client was not looking to do the work himself on Lot 2 as he wished to subdivide and then sell it. He added that sighting out items would not necessarily mean the location would be feasible once work began. MT asked if a perk test or any well research had been done yet to which Mr. McPherson replied he did not believe so and added it was all gravel. MT noted the applicant would still need to finish the Minor Subdivision Application with the Planning Board which would also consist of a Public Hearing. Ms. Ryan clarified that the Minor Subdivision hinged on the determination by the ZBA and the site plan presented would be the same one utilized by the PB. She added that should if the ZBA and PB approved, then a building permit would be needed and would involve Zoning standards that would need to be met for such things as the

driveway. ZBA members agreed that those items would be a purview of the PB. SB asked Mr. McPherson if Mr. Bedard's concern on the easement could be looked into. Mr. McPherson replied yes and he would advise his client not to try and remove the easement rights. CC reiterated that item was not a Board concern and stated that Mr. McPherson may wish to address it with his client just to be neighborly. Mr. McPherson replied that he was not aware of any disturbance to the easement and that his client noted to him that the easement as been done years ago. MT noted that the parcel size for Lot 2 would clearly handle any issue in regards to perking too fast or soil augmentation that may happen for the septic. She noted that it would be for a single-family house; thus, would draw a minimum amount of water from an aquifer and not cause damage or detriment to the surrounding area. Mr. McPherson informed all that Eric Dahl had texted him and stated that there was no intention to destruct the easement as it existed for Mr. Bedard.

MT then went over the criteria that ZBA members were to consider when making a determination on an Area Variance Application:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
MT stated that it would be a single-family residence in an area of the same; thus, would not create any detriment but rather fit in with the character of the neighborhood. AL noted that Lot 2 would be a significantly larger lot then most others in the area however the proposal for one home would not impact water usage.
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 the property was reviewed/discussed and there were no other options to which SB agreed.
3. Whether the requested area variance is substantial.
MT stated that the requested Area Variance for 50' versus required 150' was one of the larger requests seen however had been created prior to current Board members.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.
MT stated that it had been noted a few times that Lot 2 would consist of 8-acres and a typically a single-family residence would not impact the land or usage of the land.
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 a majority of the applications received had been self-created and was the nature of the applications.

MT motioned to conduct an uncoordinated review for the SEQR and classified the project as an Unlisted action; seconded by AL and all approved. MT motioned to give this action a Negative Declaration under SEQR; seconded by SB and all approved. MT then motioned to approve Lot 2 with a lot width of 50' for an Area Variance of 100'; seconded by AL and all approved.

Area Variance Application

Walter K. Scheeren (applicant)
Shannon Scheeren (property owner)
14 Helen Lane
West Sand Lake, NY 12196
R – Residential Zoning District

Tax Map # 147.1-2-47

Lot Size: .258 acres

An area variance application regarding insufficient rear yard setback for a proposed 16' x 16' deck.

Shannon Scheeren and Walter Scheeren were present. Site pictures were reviewed and Walter Scheeren stated that his son and daughter-in-law had purchased the home approximately 7 years ago. He explained that the house was situated way back on the parcel; thus, they had been aware that the home did not have a backyard and that a large hill existed behind the home that led onto Route 351. He added that they utilized the front yard as the entertainment area and consisted of a picnic table, BBQ, firepit and swing set. Mr. Scheeren stated that the owners recently discussed selling the home and moving onto his farm in Schaghticoke and build another home. He explained that in trying to sell the home; there had been more than a dozen showings and 2/3 of those interested had negative comments in regards to no usable space in the backyard and some potential buyers indicated that was a deal breaker. He stated that he was a home builder and came up with the idea to place a deck off the second floor as that was the common area. Another site picture was reviewed and he detailed the layout of the back yard area, end of the property line and placement for the proposed deck. He added that the only other option would be to build an 8' retaining wall, lower the ground area to equal the 1st floor however that would then be outside bedroom areas. He added that option would also require installation of a doorway and stairs; thus, utilizing a large percentage of the usable space created. He stated that the idea for the proposed deck was made prior to the house being placed on the market, and, if approved, would be done whether the home sold or not. He stated that the deck would be 16'x16' to accommodate a picnic table and BBQ. He explained that the double window in the dining room would be replaced with a sliding door. MT clarified that there were no neighbors behind the home as it went directly to Route 351 to which Mr. Scheeren agreed and stated that beyond the property line was actually state property. AL asked what the distance would be from the edge of the deck to the property line to which Mr. Scheeren replied within 2'. AL noted that the hill was steep and asked much uphill was it to the road surface. Mr. Scheeren replied that the crest of the hill was about the same, if not a bit taller, than the ridge roof of the home. With no further questions, MT motioned to schedule the Public Hearing for December 10, 2020 at 7 pm; seconded by GB and all approved. MT explained the Public Hearing process that would take place on December 10th to which Mr. Scheeren replied that as he was a builder, he was familiar with the process. MT stated that a site visit may be performed by Board members individually and arrangements were discussed with the applicant.

DRAFT RESOLUTION APPROVALS

Area Variance Application for Jason & Amanda Grignon

SB motioned to waive the full reading of the drafted Resolution; seconded by AL and all approved.
SB motioned to approve the Resolution in its entirety; seconded by AL and all approved.

DRAFT MINUTES FOR APPROVAL – MT motioned to accept the July 9, 2020 minutes as submitted, seconded by SB and all approved.

ADJOURNMENT - MT motioned to close the meeting at 8:34pm; seconded by AL and all approved.