

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
October 24, 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: Melissa Toni opened the meeting at 7:00 PM

MEMBERS PRESENT: Melissa Toni
Jeb Bond
Stuart Nippes
Craig Crist, Esq.
Geraldine Burger
Scott Bendett

MEMBERS ABSENT:

OTHERS PRESENT: Susan Howe, Barbara Schulman, Rocco Testo, Kevin McGrath, Chris McGrath, Monica Ryan

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

Area Variance Application and Public Hearing

Harold and Susan Howe
61 Holcomb Road
Averill Park, NY 12018
R – Residential Zoning District

Tax Map #159.-1-49

Lot Size: 1.26 acres

An Area Variance Application to construct an accessory building in the front yard.

Melissa Toni (MT) explained the Area Variance and Public Hearing process. Susan Howe presented and stated that their proposed plan was for the construction of a storage shed. She added that the proposed structure would be 100' from the road versus the 200' required by the Zoning Code. She explained that as the proposed location had an existing pad and electricity which was there since they had purchased the property, it seemed the most feasible location. Ms. Howe explained that there was an area on the other side however that location would require removal of trees and excavation which is why the proposed location seemed more logical. Scott Bendett (SB) asked if there had been an existing structure on the proposed location originally. Ms. Howe replied no. SB then asked why there was electricity near the proposed location. Ms. Howe replied that she understood the previous owner had been an older lady and her son had placed the pad and electricity there as he would visit her from California in a large motorhome. MT explained that Ms. Howe was seeking an Area Variance to allow the proposed shed to be placed closer to the road than the Zoning Code allowed. MT then asked if the proposed structure would be seen from the road. Ms. Howe replied no due to trees however it may be seen when the structure is built. Geraldine Burger (GB) stated that the driveway curved and clarified with Ms. Howe that

the location of the structure was to be beyond the driveway. GB clarified that electricity already existed for which Ms. Howe agreed and added that it was on the pole. GB then asked if the ground would be disturbed. Ms. Howe replied no as the pad already existed. At 7:05pm, SB motioned to open the Public Hearing; seconded by Jeb Bond (JB) and all approved. As new attendees were present since the meeting had opened, MT explained the Public Hearing process for the Area Variance Application and asked the public to step forward if they had a relevant comment. As there were no public comments, MT motioned to close the Public Hearing at 7:07pm; seconded by SB and all approved. Craig Crist (CC) explained the process approval steps for such application. SB then motioned to declare the Town of Sand Lake Zoning Board as lead agency with no other interested agencies or involved parties. Seconded by GB and all approved. SB motioned to classify the project as a Type 2 action under SEQRA as there was no significant or adverse impact on the environment. Seconded by GB and all approved. SB then motioned to approve the Area Variance as submitted; seconded by JB and all approved. Ms. Howe asked how long the approval was good for considering it was getting late into the year. MT replied that the approval was effective immediately and good until such time as the shed was built.

Area Variance Application and Public Hearing

Barbara and William Schulman

Tax Map #149.11-2-2.2

44 Lawson Road

Lot Size: .30 acres

Sand Lake, NY 12153

RR – Rural Residential Zoning District

An Area Variance Application to construct an addition on seasonal camp encroaching on the side yard setback.

Barbara Schulman presented and stated that her family was the owner of this small summer camp on Bowman Pond for which their proposed plan is for a 16' addition on the left side. She explained that the addition would be 15' versus the required 20' for the side yard setback. Ms. Schulman added that she had contacted the neighbor who provided a letter of agreement to the project. MT stated that upon the Public Hearing being opened, the letter would be read into the record as a public comment. With no further questions from the ZBA members, Stuart Nippes (SN) motioned to open the Public Hearing at 7:10pm; seconded by MT and all approved. As no one stepped forward with public comments, MT proceeded to read the neighbor letter from Barbara Ann Connole Boughton which had been submitted by Ms. Schulman:

I am the owner of the property at 48 Lawson Road, Sand Lake, NY (Big Bowman Pond) which is directly adjacent to northern side of the property owned by Dr. William M. and Barbara Schulman at 44 Lawson Road, Sand Lake, NY 12153.

The Schulman's are planning to build an addition to their camp, which would be approximately 15' (as opposed to the requisite 20 feet) from my property.

As such, I do not have any objections to this, and am in support of a variance for the Schulman's to proceed with their proposed addition.

MT asked if Barbara Connole Boughton was the property that would be looking at the addition. Ms. Schulman replied yes and added that Ms. Connole Boughton was just north of the property line. MT replied that it was the neighbor's property that concerned her in regards to the line of site. The site plan map was reviewed and discussed for location of neighbor in relation to the proposed addition. Ms. Schulman explained that the property line was slanted and hard to make out. She added that Ms. Connole Boughton was very familiar with the property line; thus, it was determined to the best of their ability that the distance of the addition would vary from approximately 15 to 17'. MT asked about a number of older eastern white pine trees and asked Ms. Schulman if those trees would need to be taken down. Ms.

Schulman responded no for the eastern white pines and added that a poplar tree under 6" would need to be removed – the site plan picture was referenced to pinpoint the poplar tree. Ms. Schulman stated she had also received the Planning Board's approval for the Scenic Preservation Application which covered all aspects of the project such as materials, color and lighting as well as the project being 80' from the water's edge versus the required 100'. GB commented that she had no further questions seeing as Ms. Schulman's neighbor indicated there was not an issue with the addition being 15 versus 20' from the property line. CC clarified for ZBA members that the Planning Board had already designated itself as the lead agency and also classified the project as a Type 2 action under SEQR; thus, no further action was needed. MT then motioned to close the Public Hearing at 7:16pm; seconded by JB and all approved. CC then read the NYS Town Law 267-B 3 for all present:

3. Area variances.

(a)The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b)In making its determination, the zoning board of appeals 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:

- (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;
- (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;
- (3)** whether the requested area variance is substantial;
- (4)** whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (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.

(c)The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

MT and SB 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 she did not view the project of a small addition toward the back of the existing house as having impact on the environment or the community. She added that trees for screening would remain.
- (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;
SB stated he did not see any other way; thus, proposed location only feasible way.
- (3)** whether the requested area variance is substantial;
SB stated that the area variance requested for the location of the proposed structure was not seen as substantial (25%).
- (4)** whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

SB stated that he did not view the project as having an adverse impact as the primary structure for which the addition would be added was seasonal.

- (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.

SB stated that most Area Variance requests seen by the ZBA have been self-created. He added that the review and approval of such requests is a balancing act.

SB then motioned to approve the application as submitted. Seconded by SN and all approved. CC asked if all ZBA members were in agreement with SB's responses to the five criteria. All ZBA members replied they were in agreement.

Additional Discussion – Possible change of ZBA Meeting night from third Thursday to second Thursday of each month.

MT stated that the process for these next Area Variance applications was to gather information from the applicants and make a determination if sufficient information has been submitted in order to schedule a public hearing. MT stated that prior to hearing the last two agenda items, the possible change of the monthly meeting date for the ZBA should be discussed. MT explained that the ZBA normally met on the 3rd Thursday of each month; however, before them was a discussion for a proposed change to hold the meeting the 2nd Thursday of each month. She added that this change would have the ZBA meeting in between the Planning Board (PB) meetings and asked Monica Ryan to further clarify. Ms. Ryan stated that it was found for those applicants who needed to have dual consideration by the PB and ZBA, the later meeting date of the ZBA placed a long delay onto the applicant. She explained that the dual consideration applicants would then ask if the PB process could be started ahead of the ZBA to possibly receive a conditional approval pending the outcome of the ZBA rather than being two months into the process. She stated that the ZBA change to the 2nd Thursday of the month would help to streamline the overall process. Ms. Ryan indicated that she was not aware if there had been a particular reason for the current meeting date or if ZBA members would need to make changes elsewhere to accommodate a different meeting date each month. She added that, if feasible, the change could begin in the New Year to allow time for members to make adjustments. MT replied that while she had no issue with the change; she would not be able to start it until December as she was scheduled to be out of town for the proposed change of date in November. SN indicated that he would be fine with the change. GB stated that she had been scheduling everything else based on the ZBA meeting being the 3rd Thursday of the month. She added that she felt some time should be given for the public to be alerted to the change; thus, did not see it as feasible to make the change too soon. Ms. Ryan agreed that any change could not be done immediately, however reiterated that the applicants are the ones who were asking why the lapse of time between the PB and ZBA meetings. MT stated that she saw valid reasons for the change. SB replied that the ZBA should do what is best for the public and he would be willing to make necessary arrangements for the change of date beginning in the New Year. He added that he had always thought it would have been good for the ZBA to meet twice a month versus once a month. Ms. Ryan replied that the change would only be relevant for those applications that needed dual consideration. SN clarified that the change would mean that the ZBA would meet the 2nd Thursday following the 1st PB meeting for which Ms. Ryan agreed. SB asked if the Town Board had to make that change. CC replied that the Town Board would do it in their organizational meeting however thought it would be good for the ZBA to comment to the Town Board. Ms. Ryan added that the Planning/Zoning Office could communicate to the Town Board that this was the preference of the ZBA. SN made a motion to approve the change to the ZBA meeting date as proposed; seconded by JB

and all approved. At that point, MT stated that for the following Area Variance Applications, the Public Hearing date would be set for November 21, 2019.

Area Variance Application

Betsy Owens (Executor and Applicant)
The Estate of Jackson Lawrence (Property Owner)
Eastern Union Turnpike (Lot 2)
Averill Park, NY 12018

Tax Map #159.-1-13.51

Lot Size: 4.77 acres

An Area Variance Application for an insufficient 3:1 depth to width ratio created as a result of a proposed Minor Subdivision.

Kevin McGrath presented and stated that an Area Variance Application was needed for the estate of Jackson Lawrence for an insufficient 3:1 depth to width ratio as a result of a proposed Minor Subdivision. He explained that Betsy Owens who lived in North Carolina was the applicant and executor of estate. He added that there was documentation in the file as to Ms. Owens being named the executor of this property. Mr. McGrath then stated that the primary parcel totaled over 10 ½ acres on Glass Lake which was being proposed for a two-lot subdivision for the son and the daughter. Mr. McGrath then referred to the site plan map and explained that the current driveway lead to a gazebo and shed. He further stated that the son had indicated he may build on one lot and the daughter had indicated she may only use her parcel as a campsite. He then stated that the proposed lots would have sufficient lot width; however, while Lot 1 complied; Lot 2 would not meet the 3:1 ratio as the property line needed to be angled. He then referred to the site plan map and showed the angle along with how the depth to width ratio was calculated in accordance with the Town's Zoning code. Mr. McGrath then stated he understood the Zoning code that pertained to this application was done so as not to create spaghetti lots. He added that this would be just a two-lot subdivision and as such, the proposed division was the only manner for which the son and daughter could have approximately an equal amount of land as well as equal frontage on the road and on the lake. MT stated that the application materials were to be reviewed to ensure there was sufficient information for ZBA members and the public in order to schedule a Public Hearing. MT asked Ms. Ryan if there was any other way to calculate the proposed plan. Ms. Ryan replied there was not due to the road and lake. Mr. McGrath added that the son had shown him a sample of a house/camp that he may build which led to where the property line needed to be placed. He added that if he were to try and pivot the line, it still would not work nor make it practical for use. He also stated that the clients are aware that this would be a self-created situation. MT stated that Lot 2 would be 4.46 acres for which Mr. McGrath agreed. MT reiterated that Lot 1 met all Zoning Code requirements for which Mr. McGrath agreed. MT stated that a recommendation from the Planning Board (PB) would need to be sought and the final ZBA decision would then be shared with the PB for their consideration on the review of the Minor Subdivision Application. Ms. Ryan explained that it was the State statute for the ZBA referral to the PB due to the proposed Minor Subdivision. Mr. McGrath stated he was scheduled to be at the November 6 PB meeting where they could then provide their recommendation to the ZBA and then he would attend the November 21st ZBA meeting and back to the PB on December 4th. With no other questions, SN motioned to refer the Area Variance Application to the PB for recommendation; seconded by JB and all approved. MT added that the PB referral would include the ZBA consent for the PB to serve as the Lead Agency for which SN and JB agreed and all approved. SN then motioned to schedule the Public Hearing for November 21st at 7:00PM; seconded by JB and all approved. MT stated that individual site visits to the property may be done in the meantime. Mr. McGrath indicated that was fine and explained how the land could be accessed.

Area Variance Application

Rocco Testo
204 Rt. 151
East Greenbush, NY 12061
AR – Agriculture/Residential Zoning District

Tax Map #168.-4-58.21

Lot Size: 2 acres

An Area Variance Application for an insufficient lot width and an insufficient 3:1 width to depth ratio created as a result of a Minor Subdivision.

Rocco Testo presented and stated that he was proposing a two-lot subdivision on a 5.1-acre parcel – he then shared copies of the site plan map for review. He explained that one lot would be 3 acres and the second lot would be 2 acres. He further explained that the road frontage criteria of 150' was met; however, when measured at the front setback line, it changed to 135'. MT stated that the narrowing was due to placement of the property line. Mr. Testo agreed and added the reason was due to an existing driveway and well on the 3-acre lot as well as trying to maintain the 3:1 ratio on that lot. MT asked where the house would be built on Lot 2. Mr. Testo replied that it would be approximately 150' off the road – he then referred to the site plan map to show the approximate location. MT stated that this Area Variance would also require a referral to the PB for the insufficient lot depth to width ratio of 4.75:1 for which Mr. Testo agreed. Ms. Ryan explained that as the survey had not provided the exact depth from the setback line, a scale was utilized to approximate the depth to width ratio. MT asked what was the purpose of the proposed lot. Mr. Testo replied “to build a house”. MT asked if it would be for family. Mr. Testo replied it started out in that manner; however not guaranteed. MT stated that that this would be a long skinny lot in addition to the 3:1 issue. She then asked if the houses would share a driveway. Mr. Testo replied no, a new driveway would be put in. MT referred to the site plan map and pointed out to the existing house along with location of the well for the 3-acre lot. MT then stated that due to the existing driveway there was no way to move the property line for which Mr. Testo agreed. Ms. Ryan added that different options had been reviewed upon Mr. Testo’s initial visit to the Planning/Zoning Office with the proposed plan. Mr. Testo added that the existing driveway came in around the well; so, to move the pin would place it in the driveway. With no other questions, MT motioned to refer the Area Variance Application to the PB for recommendation; seconded by SB and all approved. MT motioned that the PB referral would include the ZBA consent for the PB to serve as the Lead Agency; seconded by SN and all approved. MT then motioned to schedule the Public Hearing for November 21st at 7:00PM; seconded by SB and all approved. MT stated that individual site visits to the property may be done in the meantime.

RESOLUTION - MT explained that there was a Resolution before them on the denial of the Neil VanBuren Area Variance Application. As there were no questions or changes proposed by ZBA members, Jeb Bond (JB) motioned to accept and adopt the Resolution; seconded by SN and all approved.

MINUTES – August 15, 2019 - MT motioned to accept the minutes as submitted. Seconded by JB and all approved.

ADJOURNMENT - SB motioned to close the meeting at 7:49PM, seconded by MT and all approved to close the meeting.