

**Town of Sand Lake  
Zoning Board of Appeals (ZBA)  
September 19, 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  
Scott Bendett

MEMBERS ABSENT:

OTHERS PRESENT: John Hitchcock, Art Herman, Jr., Harold and Susan Howe, Deb VanBuren and Monica Ryan

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

Melissa Toni (MT) announced that there was not an Audio Visual Technical available to broadcast or stream a copy of this meeting for the Town website.

**Area Variance Application**

Neil VanBuren  
5 Victor Lane  
Averill Park, NY 12018  
R – Residential Zoning District/Commercial Reuse Overlay Zoning District  
An Area Variance Application to construct a detached garage in the front yard setback.

**Tax Map #148.3-2-46**

Lot Size: .40 acres

Deb VanBuren and daughter Chris stepped forward. MT explained that this Area Variance application had been a continuance per Mr. VanBuren's request for it to be placed on hold as not all of the Zoning Board of Appeals (ZBA) members were present to vote at the last meeting. MT stated that there now was a full board at this meeting, in order that a full vote may be taken. MT further stated that since the last meeting, ZBA members had the opportunity to view the site for the proposed garage. MT asked if there were any questions from ZBA members. Craig Crist (CC) asked if the ZBA member not present at the previous meeting had the opportunity to review the streamed version. Stuart Nippes (SN) indicated that he had done so. SN also stated he had visited the site and seen the stakes for the proposed placement of the garage. He added that he did not see a way to place the garage on the backside for which Ms. VanBuren agreed. CC clarified for all the reasons for two Area Variances being needed: 1) the proposed structure would be in the front yard setback; 2) the proposed structure would exceed, by approximately 10%, the amount of allowable impervious surface of 30%. Geraldine Burger (GB) asked

for clarification on the dimension of the proposed garage. Ms. VanBuren replied that it would be 24'x26' with the 24' foot facing Victor Lane and then be 26' long. GB asked if the garage would be attached to the house for which Ms. VanBuren replied no. MT and GB reviewed the site picture for the proposed layout with Ms. VanBuren. SN stated that the structure would be 22' off the side of Route 43 and MT agreed. SN asked if there was another area for the structure to be placed. Ms. VanBuren replied they don't as they would be in the neighbor's yard in order to construct it in the back. CC advised Ms. VanBuren that as there was no audio visual being done for this meeting, she had the right to ask that it be held at another time. Ms. VanBuren replied that they wished to proceed. MT then read the criteria for which ZBA members would consider for approval or denial of the Area Variance application: 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 following five factors. MT individually read the criteria for 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;
- (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.

MT then stated that in respect to criteria #1 above, Mr. VanBuren previously stated that the color scheme and materials for the proposed structure would be similar to the primary residence and that the existing drainage system would be utilized. MT then explained that surrounding neighbors have met the required setback of 50' and that homes in that area all have a similar streetscape along that stretch of Route 43. She added that this proposed structure would most likely obstruct that view as there would not be any screening thus be completely visible from Route 43. MT also stated that the neighbor to the west would have the proposed structure full in their front view. MT explained that while the project would not have an adverse impact, it would exceed the maximum impervious surface on the lot. GB asked if anyone had spoken to the neighbors. Ms. VanBuren replied yes and they had no problems with the proposed project. MT stated that a neighbor had been present and spoke at the last meeting asking if any junk would be stored outside for which Ms. VanBuren stated there would not. Ms. VanBuren agreed with MT's statement. With no other comments on criteria #1, MT then went on to discuss criteria #2 above. MT stated that there was land in the backyard that could be utilized and that the applicants had stated there would be a cost to it as the area would need to be dug out for a driveway. Ms. VanBuren agreed and added that she would have to walk down the hill in the winter time to get into the house thus defeating the purpose. MT then discussed criteria #3 above and stated that the needed Area Variance would be 100% substantial as the entire structure would be in the front yard. She then informed Ms. VanBuren that the ZBA does not typically issue 100% Area Variances as most of them are for a much lower percentage. MT then went on to discuss criteria #4 above and stated the proposed project was not viewed as having a large environmental impact. MT moved onto criteria #5 above and stated that the vast majority of items in front of the ZBA are self-created. She added that in this case, the applicants had installed a pool five years ago in a location where the garage could have been placed and would have been legal. With no additional ZBA member comments, MT indicated that her motion would be unfavorable and asked if other ZBA members felt differently for which no one replied. MT stated that there had been a fairly substantial evaluation of the property. She further stated that the

project would need a substantial Area Variance for the setback due to it totally being in the front yard and that it would be very apparent that the structure would break up the existing site line on Route 43 in that area. MT then stated that it was for these reasons she motioned to deny the Area Variance which was seconded by SN. Jeb Bond (JB) and Scott Bendett (SB) were in favor of the denial and GB was opposed. CC clarified for all that there were four in favor of a denial and one in favor of approval for which ZBA members agreed. Ms. VanBuren stepped away at that point.

**Area Variance Application**

Ivo Garcia – Dunkin Donuts  
3696 NY 43

**Tax Map #146.2-5-36**  
Lot Size: .465 +/- acres

West Sand Lake, NY 12196

HC – Hamlet Commercial Zoning District

An Area Variance Application for parking location and exceeding the maximum front yard setbacks for a proposed commercial use.

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. CC asked if this project had been classified yet as a Type 2 action. MT replied it had been at the last meeting. John Hitchcock of ABD Engineers presented on his client's proposal to build a 2,200 square foot Dunkin Donuts with a drive-thru at the location of 3696 Route 43. He stated that this proposal would require Area Variances for 1) 100% of the parking to be on the side versus the Town Code of allowing 50% of the parking to be on the side; 2) further front setbacks than the required 0-10' max. Mr. Hitchcock explained that on Route 150, there would be a 62' setback and on Route 43 it would be 20' back. Mr. Hitchcock explained that they had been at 30' setback for Route 150 however the Planning Board stated that the building needed to be parallel with Route 43 which added to that setback. MT asked Mr. Hitchcock to summarize the 9/18/19 Planning Board (PB) meeting. Mr. Hitchcock replied that he had not attended that meeting however he had watched the streamed version. Monica Ryan stated that Ivo Garcia attended the 9/18/19 PB meeting and that Mr. Garcia and Mr. Hitchcock had also attended the PB meeting on 9/4/19. Ms. Ryan explained that PB Public Hearing had not been scheduled as the PB members awaited a report on a traffic study done while school was in session. She then explained that it had been discovered that the traffic study previously done was performed while school was in session. She added that the PB meeting of 9/18/19 had a fair amount of discussion; however, the PB was in a holding pattern for the project until such time as they can see the Town engineer's review and also if DOT had any feedback for the proposed plan. Ms. Ryan added that the PB had a lot of concern about how the ingress/egress on Route 43 would work as existing curb cuts for DD were close to the Hannaford entrance as well as how things would work on Route 150. Ms. Ryan informed the ZBA members that the Town's engineer had been sent all information. She also added that she was unsure how that information may or may not impact the Area Variances being sought. GB mentioned how the property had been contaminated and asked if it had been remediated along with any reports reflecting that information. Ms. Ryan replied that there were documents previously provided to the Town to reflect what Mobile had done with the site, however they were not related or part of this application. GB then asked what had been the outcome. SN replied that he believed the only restriction was that the water under the site could not be used; however other water could be

utilized. GB clarified that she was asking if there was a report to review. MT replied that as Mobile had done it, the report would most likely be in their possession and once ownership is transferred it is a closed file; thus, may not be obtainable. GB then stated that Encon should have a report that would be obtainable in order to see that the site is environmentally correct. CC stated that it was the ZBA's responsibility to focus on the Area Variances before them rather than what is irrelevant to the meeting. He added that information would be part of the PB Site Plan Review and may or may not be relevant to any decision made by the ZBA. Mr. Hitchcock stated that the water would be pulled from another site and that they had it tested for drinkability. He added that while they could try to obtain the reports from Mobile, it would not affect the positioning of the building. GB stated for her to make a decision when it came time to vote, she would like to see what the water report had to say. CC asked what were the Area Variances being sought. Ms. Ryan responded that DD needed Area Variances for exceeding the maximum Hamlet setback and for 100% of the parking on to be on the side yard. SN asked if there was to be 13 parking spaces on the side yard for which MT replied it was 13.2. SN then asked about the location of drive-thru for which Mr. Hitchcock pointed out the path on the site plan map. JB asked if the exit from DD onto Route 150 would be one-way going north. Mr. Hitchcock and Ms. Ryan responded that was still under discussion with the PB. SN asked about the Route 43 ingress/egress being right across from the Hannaford entrance. Mr. Hitchcock referred to the site plan map and stated that it would be slightly offset. MT asked about shifting it to the left for which it was decided that it would end up too close to the intersection. Ms. Ryan added that the PB had raised the possibility of shared access with the laundromat as that had been recommended in the linkage study. Mr. Hitchcock replied that while the applicant was against the shared access he would speak to him further on it. Ms. Ryan stated that the Area Variances would still be needed at a minimum for the parking to be on the side. MT agreed and added that she was debating the risk for the ZBA to schedule a Public Hearing now and then if new information were to be received, it could result in it having to reschedule. CC stated that the ZBA may want to ensure all information is before them prior to the Public Hearing being scheduled. CC then asked Mr. Hitchcock if he had the remediation status of the property as questioned by GB. Mr. Hitchcock responded that other than the property being buildable, he did not have any further information. CC then asked Mr. Hitchcock that if the DEC did sign a release for the property, was that something Mr. Hitchcock could obtain. Mr. Hitchcock responded that he would look into the DEC sign-off documentation and added that Mr. Garcia may have that information with the deed. Mr. Hitchcock then questioned if, hypothetically, they were able to move the building closer to the required setbacks would that change anything. MT replied that would be more within the Town's regulations and did not believe such information would need to be re-noticed. SN stated that he would prefer to see the building further back than closer to allow for a future turning lane. MT replied that she believed the needed area for a future roundabout and/or turning lane had been already been accounted for. Ms. Ryan added that the linkage study did account for a left-hand turn/center lane. Mr. Hitchcock referred to the site plan map and stated that there would definitely be enough room for a center lane. MT asked Mr. Hitchcock if he could see the DOT property line. Mr. Hitchcock pointed out that area on the site plan map and stated the reason for not moving forward with one yet may be a matter of funding. Ms. Ryan added that the Town had not sought it yet and agreed it would then lead to a funding issue. She added that in previous discussions with a DOT engineer, it had been decided that a roundabout would be the only mechanism that would move the traffic as there was not sufficient room on the busiest

corridors for turning lanes nor would it solve the traffic issue. CC asked Mr. Hitchcock if he consented to proceeding with this meeting without the video-taping. Mr. Hitchcock replied yes. MT stated that part of the reason for the required maximum setback in this area is for walkability and alignment of the buildings. She then stated that the proposed DD would be setback a little more, however, other properties in the vicinity were also setback a little further; thus, DD would not be too far off from the other nearby businesses. MT then stated that the risk to scheduling a Public Hearing could be that the applicant may then need to ask for something different. She noted that the applicant would be asking for a 50% Area Variance in order for the parking to be 100% on the side and also Area Variances to exceed the maximum setbacks for proposed building to be 62' from Route 150 and 20' from Route 43. MT stated that the risk would be that the setback may end up being further; however if moved closer that could result in a shift of the parking. MT then stated that if those were the changes, she did not believe that information would then need to be re-noticed. MT also stated that the other risk, to both the ZBA and the Applicant, was that the proposed plan had not been settled yet with the PB for all needed information. Mr. Hitchcock replied that he understood. MT clarified for GB that the Area Variance needed for parking was due to all parking being placed on the side as there is no rear to utilize on this lot. GB indicated that she had read the PB meeting notes and as she visited that intersection quite frequently, she inquired about the estimate of 7 vehicles being stacked for the drive-thru. Mr. Hitchcock replied that there would still be room before it backed up onto Route 43. He explained that studies done at the DD shop by HVCC as well as in East Greenbush revealed that when there were 6-7 vehicles stacked, usually customers would then decide to park and added that the most he had seen stacked were 9. He then shared that the study at the DD by HVCC was done between the peak hours of 7-9am and was very busy. GB stated she remained concerned with traffic possibly backed onto Route 43 and recommended that a few studies be done to obtain an average. Mr. Hitchcock replied that additional reviews can be done for more numbers and added that at least 7 additional vehicles, for a total of 14, could be stacked prior to backing onto Route 43. SN clarified that Area Variances were needed for the parking and two setbacks and if changes were needed it would be for the setbacks which would only get better. Mr. Hitchcock agreed. SN motioned to schedule the Public Hearing. MT added to that motion by stating that two weeks prior to the ZBA Public Hearing meeting all needed to be settled with the PB which would allow ZBA members time to review the information. Ms. Ryan asked for the dates to be clarified. MT replied that all the design modifications would need to be settled by October 3 or the ZBA would have to postpone the Public Hearing. Ms. Ryan then stated that the Public Hearing notice would need to be published in the paper prior to it and that another unknown would be the likelihood of the Town's engineer having his report ready prior to that date. ZBA members then reviewed and discussed staff's availability for the October meeting and agreed to hold it on the 24<sup>th</sup> versus the 17<sup>th</sup>. MT asked Mr. Hitchcock if he would be able to attend the ZBA meeting on October 24<sup>th</sup> for which he replied yes. SN made a motion to hold a Public Hearing on October 24<sup>th</sup> for DD if the application is complete by the PB by October 2<sup>nd</sup>. MT seconded the motion and all approved. MT explained to Mr. Hitchcock that if all was not completed prior to that date, then the ZBA Public Hearing would be postponed to November 21<sup>st</sup>. CC recommended that a motion be made on the change of date for the October ZBA meeting. SN made a motion to move the ZBA meeting from October 17<sup>th</sup> to the 24<sup>th</sup>; seconded by MT and all approved. Ms. Ryan asked the ZBA if the availability of the other two applicants could be ascertained. CC then asked the availability of Arthur Herman who was representing

the Schulman's application. Mr. Herman explained that the applicant did not initially plan on needing an Area Variance just a Scenic Preservation however it turned out the project would be within 15' of the property line. He added that the earlier date would have been more feasible as the project depended on weather and temperature. CC pointed out that there was only a seven-day difference in the meeting dates. MT then asked the availability of the Howe's who replied they were fine with October 24<sup>th</sup>. MT stated that the next ZBA meeting would be October 24<sup>th</sup>.

**Area Variance Application**

Harold and Susan Howe

**Tax Map #159.-1-49**

61 Holcomb Road

Averill Park, NY 12018

Lot Size: 1.26 acres

R – Residential Zoning District

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

Susan and Harold Howe presented and stated that they wish to construct an accessory building and shared a picture of what they had in mind. She explained the issue of the structure not being 200' away from the road but rather 100'. She added that when they purchased the place approximately four years ago, there had been an existing pad and utility pole and therefore seemed the most obvious location to place the proposed structure. Ms. Howe stated any other location would require excavation and removal of trees. MT reviewed with the Howe's the site plan map for clarification on location of proposed structure and Ms. Howe pointed out the existing pad. MT then shared that information with the other ZBA members. MT then asked about another location on the site. Ms. Howe replied that upon purchase of the property, they had to move the driveway and while unsure if that was legal or not, they had not pursued it. Ms. Howe then referred back to the existing pad and stated that it would be out of the way and allow for turnaround. MT then asked if the surrounding area was all forested for which Ms. Howe agreed. MT also noted that the neighbor's house could not easily be seen for which the Howe's agreed. SN asked what was on the existing pad. Ms. Howe replied nothing, just gravel. MT motioned to hold the Public Hearing on October 24, 2019, seconded by SN and all approved. MT then asked if it would be alright for ZBA members to do individual site visits for which the Howe's agreed.

**A five-minute recess was taken.**

**Area Variance Application**

Barbara and William Schulman

**Tax Map #149.11-2-2.2**

44 Lawson Road

Sand Lake, NY 12153

Lot Size: .30 acres

RR – Rural Residential Zoning District

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

Contractor Arthur Herman represented and stated that the Applicant had originally hired another contractor who ended up in the hospital; thus, he was then asked to assist on the project. He informed ZBA members that he would not be present and/or presenting at the Public Hearing when scheduled. Mr. Herman added that he had been contacted by the Applicant to put an addition on her house. Mr. Herman had then visited the site and noted that the project was too close to the lake and informed the applicant that a Scenic Preservation application was needed. He then explained that upon completing the Scenic Preservation application it was noted that the project would be within 15' of the property line

on the left side which resulted in the need for the Area Variance. Mr. Herman asked ZBA members if they had received all of the information on the project. MT replied yes and stated that she had taken a ride by the site earlier that day and noted it was forested between the houses on the side where the addition is to be placed and added that all the camps in that area were close to one another. MT then stated that she did not see the project as having any issues and motioned to schedule a Public Hearing for October 24 2019; seconded by SB and all approved.

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

**ADJOURNMENT** – MT motioned to close the meeting at 8:04PM, seconded by SB and all approved to close the meeting.