

**Town of Sand Lake
Zoning Board of Appeals (ZBA)
October 12, 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 7:00 PM, seconded by SB and all approved.**
- MEMBERS PRESENT:** Melissa Toni (MT), Nancy Perry (NP), Amy Lent (AL), Scott A. Blair (SB), Craig Crist, Esq. (CC)
- MEMBERS ABSENT:** Daniel Hogle (DH)
- OTHERS PRESENT:** Joseph Smyth, Ed Smyth, Debbie Stockton, Frank Maier, Julie Ernest, Mike Ernest, Matt Earnest, Jake Lehman, Shawn Beqaj and Tom Weckesser
- RECORDING CLERK:** Sarah Jones (SJ) Clerk for Planning Board and ZBA

MT reviewed the agenda and explained how the meeting would progress.

Area Variance Application with Public Hearing

Frank Maier
1315 Burden Lake Rd
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: unknown
Lot Size: .1550 +/- acres

An Area Variance Application for insufficient side yard setback.

Frank Maier summarized the project which had been initially presented at the September 14, 2023, ZBA meeting.

With no questions from the board, MT motioned to open the public hearing at 7:05pm; seconded by NP all approved.

With no public comments made or received, MT motioned to close the Public Hearing at 7:06pm; seconded by NP and all approved.

MT said the zoning board of appeals shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at

the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

MT asked Mr. Maier if he wanted to continue as a board member was not present; to approve the application 3 out of the 4 members in attendance would need to be in favor of the application. Mr. Maier said he did want to continue.

MT then individually covered each criterion:

- A. *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.*

It is the determination of this Board that no undesirable changes will be produced because of this project. Mr. Maier is removing an addition and replacing. It does not add any residents and is a reconfiguration of the house and does maintain the characteristics of the neighborhood. SB said Mr. Maier has 7' currently on the side and this will just be a continuation of the line noting there is plenty of room in the rear of the property. He originally had three lots and made them two.

- B. *Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.*

It is the determination of this Board that there is not an alternative method to achieve the desired outcome based on the current configuration of the lot.

- C. *Whether the requested area variance is substantial.*

It is the determination of this Board that the area variance being sought is below the typical thresholds, it is a small addition and side yard setback.

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

As with many Area Variance requests before this Board, the difficulty was self-created as the applicant was aware of the lot layout at the time of purchase but that does not necessarily preclude approval of the area variance.

- E. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning 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.

MT motioned under SEQRA and declared the Town of Sand Lake Zoning Board of Appeals as the Lead Agency; seconded by NP and all approved.

MT motioned to classify the project as a Type 2 action under SEQR and no further action is required by the ZBA; seconded by NP and all approved.

MT motioned to approve the requested Area Variance as presented with no conditions, seconded by SB and all approved.

Area Variance Application with Public Hearing

Michael Ernest
785-789 Taborton Rd.
Sand Lake, NY 12153
RR – Rural Residential Zoning District

Tax Map #s 149.-2-47.12
Original Lot Size: 30.04 acres
Proposed Lot B1: 14.76 acres
Proposed Lot B2: 14.73 acres

Area Variance Application for insufficient side yard setbacks, Lot width and Lot Depth to Width.

Associated with a minor subdivision application.

Michael Ernest summarized the project which had been initially presented at the August 10, 2023, ZBA meeting as well as reviewed information previously requested of the ZBA.

SB confirmed that both homes have separate 911 addresses. Mr. Ernest advised this was correct. NP asked if there was a way to divide the lots that would not require an Area Variance. Mr. Ernest said that the only way to accomplish that would be to create a 3rd lot at the back of the property, however, it would be landlocked. SB said that it is illegal in NYS to have a landlocked piece of property.

With no further questions from the board MT motioned to open the public hearing at 7:14PM; seconded by NP and all approved.

MT advised that the public hearing for the Ernest Area Variance Application was now open so if there is a member, or several members of the public that would like to speak on this application to raise their hand and they will be asked to come to the microphones requesting that the speaker is close enough to be heard and before beginning their public comments please provide their name and address.

At this time Debbie Stockton, resident of 777 Taborton Rd Sand Lake stepped to the microphone. She said that her property borders the Ernest property and she was concerned because Chandler and Woods, the original sellers of the parcels surrounding the Ernest property did not want the properties further subdivided. She expressed that she felt signing her name and listening to someone's word meant something. SB asked if she had seen the map. Mrs. Stockton stated she had spoken to the surveyor. SB invited her to look at the map with the board members. Looking at the map, Mrs. Stockton said she is concerned because she sees the survey marks from her yard. MT asked Mrs. Stockton to verify the location of her house which she did and advised the survey markers were 110 feet from her house.

There was discussion between Mrs. Stockton and Mr. Ernest as Mrs. Stockton was afraid, they would try and build additional structures on the property even closer to her property line. NP advised Mrs. Stockton that she needed to address the board. Mrs. Stockton said the biggest concern is not stepping outside and seeing her neighbors. NP asked Mrs. Stockton 'if this were approved what would be the consequences to you?' Mrs. Stockton did not provide a clear response. MT said that the area variances before the board were for lot width to depth and side yard setbacks regarding the boundary line the Ernests were proposing to subdivide their homes, it had nothing to do with the survey marks that were currently visible to her. NP said the town can not enforce a deed restriction, it is not in the jurisdiction of the Town of Sand Lake, it is between neighbors in this circumstance. NP said case law backs this up and CC agreed. Mrs. Stockton said quote "that Mike said he would not do anything there", she then proceeded to say 'fine, that is all I ask', there was additional conversation between the Ernests and Mrs. Stockton and NP reminded Mrs. Stockton she needed to address the board. Mrs. Stockton apologized again, stating she should have talked to the Ernests family prior to the board meeting, and she would not have been present at the meeting. She said she was "fine and done" and left the meeting.

MT asked if there were any other comments on the Ernest application.

With no further comments made or received, MT motioned to close the Public Hearing at 7:22PM; seconded by AL and all approved.

MT motioned under SEQRA and declared the Town of Sand Lake Zoning Board of Appeals as the Lead Agency. The motion was seconded by AL and all approved.

MT motioned to classify the project as a Type 2 action under SEQR and no further action is required by the ZBA; seconded by AL and all approved.

MT read the criteria that the Board considers upon reviewing an Area Variance request.

MT then individually covered each criterion:

- A. *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.*

It is the determination of the Board that no undesirable changes will be produced because of this project. This entire area is Rural Residential, and they are not adding density or impervious surfaces.

- B. *Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.*

It is the determination of this Board that there is not an alternative method to achieve the desired outcome based on the current configuration of the lot as reflected in the minutes.

C. Whether the requested area variance is substantial.

It is the determination of this Board that the area variance being sought is below the threshold of the normal case law of applications they have reviewed. It is below what has previously been called substantial.

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

It is the determination of this Board that the proposed variance would not have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; the lots would continue to be very large.

E. 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 but that does not necessarily preclude approval of the area variance.

MT motioned to approve the Area Variance as presented; seconded by SB and all approved.

Area Variance Application

Edward Smyth
37 Blue Heron Rd
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 170.1-2-4
Lot Size: 2.15 acres

An Area Variance Application to remove existing camp/house and replace within same footprint over a 4-year period.

Mr. Smyth presented his application for an Area Variance explaining the plan is to tear down the existing structure and rebuild within the existing footprint but smaller. SB confirmed per the application they were requesting a 4-year period. He stated that per the building inspector you start with a demolition permit, if that demolition permit runs 1 year and then you request the building permit that is now an additional 2 years, you must start that rebuild within 2 years of the demolition of the existing structure as opposed to having it complete. The building permit can also be renewed. CC advised deferment to the building department regarding timeframe for obtaining the CO and so forth. NP advised that the ZBA cannot override the code and the building department could not issue a 4-year permit but as SB had advised the building permit could be renewed. SB confirmed the existing garage will remain to which Mr. Smyth said yes, he also said the two-story home that exists on wooden piers would be replaced on possibly a slab. SB cautioned to reach out to codes enforcement for approval on appropriate foundation. MT confirmed access to the property is not an issue. Mr. Smyth asked for clarification then stating that there is plenty of access for machinery and that he can modify the existing chain link fence as needed if more access room is needed. The board confirmed there would be no

tree removal and Mr. Smyth said he had no intention of removing any trees unless something was brought forth by the demolition company. SB said if there were to be trees removed within 100 feet of the lake a Scenic Preservation Application would be required.

With no further questions from the board, MT motioned to deem the application complete and with the public hearing be scheduled for November 9, 2023, 7:00PM; seconded by AL and all approved.

Area Variance Application

Airosmith Development OBO Archtop Fiber
78 Sheer Rd
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 158.-2-50
Lot Size: .27 acres

An Area Variance Application for insufficient side yard setbacks.

Jake Lehman represented the Area Variance Application for Airosmith Development OBO Archtop Fiber. Mr. Lehman presented the application advising they are requesting a 2-foot setback in total for an ancillary building on vacant land to install a Fiber Optic Hub to provide Fiber Optic internet to the entire Hudson Valley Region. To do so he said they need a hub site roughly every 17 KM and the Town of Sand Lake was identified as one of the areas that one would be needed to provide the Albany area with Fiber Optic internet. NP asked if Sand Lake would benefit from this, SB echoed this question. Mr. Lehman confirmed that it would and said, a minimum 1GB upload and 1 GB download speeds would be offered, and he believed that the option of Fiber Optic Internet would be available to every resident of Sand Lake. SB confirmed it is a precast building and the generator that runs is for standby. Mr. Lehman said he provided the wrong Acoustic Disclosure and provided replacement of the document to each board member. The generator being used is slightly smaller than the original document indicated. SB confirmed this is an unmanned hub. Mr. Lehman indicated that was correct and ideally it will sit unmanned for 6 months at a time before any maintenance would be necessary. NP questioned the noise. Mr. Lehman said the only thing that makes noise is the generator which runs 5-10 mins a week. MT asked where the closest neighbor was, Mr. Lehman said the closest neighbor is about 100 feet to the East. SB asked about landscaping and that he noticed the proposed fence surrounding the property. Mr. Lehman said he has previously met with Mike (Building and Codes) and SJ and would proceed with a Special Use Permit if approved by the ZBA. MT said she has many questions regarding how Fiber Optics work. Mr. Beqaj, one of the founders of Arch Top Fiber was present with Mr. Lehman, stepped forward and after introducing himself explained how Fiber Optic Internet worked.

With no further questions from the board, MT made a motion to deem the application complete; seconded by SB and all approved.

MT motioned to schedule the public hearing for November 9, 2023, at 7:00PM; seconded by AL and all approved.

Area Variance Application

Peter Brucato & Patricia Jolie
2565 NY Highway 43
Averill Park, NY 12018
R-Residential Zoning District

Tax Map #: 159.2-3-10
Lot Size: .88 acres

An Area Variance Application for insufficient side yard setbacks.

Mr. Brucato and Mrs. Jolie presented their Area Variance Application to the board proposing to demolish the existing home and garage and replace it with a new home and attached garage in an alternate footprint. He said they are located on Glass Lake. MT confirmed current side yard setbacks at 18 feet and 19 feet. SB confirmed the estimated size of the new home would be about 800 sq feet larger. MT asked how far the house was from the (neighbor) Brian French side, Mr. Brucato said he is 23.8 feet currently and the opposite neighbors' garage was 17 feet 6 inches currently. MT said the garage was separated by a driveway and Mr. Brucato confirmed. He also added there will be no trees removed.

MT said she would like the board members to do a site visit. The homeowners agreed. NP said they were not able to go as a group and the homeowners agreed. MT asked the homeowners if they had considered making the new construction narrower but longer. Mr. Brucato explained that it is challenging being they are on the lake and would like both their living space and bedroom to face the lake and if the house was oriented differently, they would be looking at their neighbors and what they are proposing will allow each neighbor to have a semiprivate view of the lake.

With no further questions from the board, MT made a motion to deem the application complete; seconded by AL and all approved.

MT motioned to schedule the public hearing for November 9, 2023, at 7:00PM; seconded by AL and all approved.

DRAFT MINUTES FOR APPROVAL- MT motioned to approve the September 14, 2023, as final; seconded by NP and all approved.

ADJOURNMENT – MT motioned to adjourn the meeting at 7:56PM; seconded by NP and all approved.