

**Town of Sand Lake  
Zoning Board of Appeals (ZBA)  
November 9, 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 7:01PM, seconded by Scott Blair**
- MEMBERS PRESENT:**                Melissa Toni (MT), Amy Lent (AL), Scott A. Blair (SB), Daniel Hogle (DH),  
Craig Crist, Esq. (CC)
- MEMBERS ABSENT:**                Nancy Perry (NP)
- OTHERS PRESENT:**                Kevin Lyons, Joseph Smyth, Stacy Smith, Peter A. Smith, Jake Lehman, Ed  
Smyth, Pat Jolie, Peter Brucato, Kevin McGrath, Brian French, Virginia  
Bourdeau, John Windover
- RECORDING CLERK:**                Sarah Jones (SJ), Clerk for Planning Board and ZBA

Before beginning the review of Applications MT reviewed the expected process as it relates to the Zoning Boards meeting. CC added, that to obtain positive relief there be 3 yes votes because only 4 of the 5 members of the board were present, however, the applicant would have the opportunity to ask to wait until the following meeting for the final vote.

**Area Variance Application with Public Hearing**

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 the same footprint over a 4-year period.

The Smyth brothers summarized the project which had been initially presented at the October 12, 2023, ZBA meeting.

As explained by SB at the previous meeting, he needed to reach out to the Codes Enforcement office for more details because this board is not able to modify those time constraints.

MT said she thought the plan was to forget the two-year requirement to allow retention of the same footprint.

Mr. Smyth said yes, it would remain in the same footprint and be smaller.

SB confirmed the variance would be given to remain within the same footprint.

The board reviewed the map confirming that they were reviewing the variance to maintain ability to re-build within the same footprint.

CC said once the home is demolished all grandfathered rights are lost.

With no additional questions from the board MT motioned; seconded by AL and unanimously approved to open the public hearing at 7:12PM.

Kevin Lyons, 43 Blue Heron, came forward, complimenting the brothers on a job well done since the passing of their father and he was in support of the project.

SB said that there was a letter received by a neighbor. MT stated it was received from Chelsea Zantay of 35 Blue Heron Rd. MT read a portion of the written comment as follows:

*While I am pleased that Mr. Smyth is improving his property, I would simply like to make it known that my property extends four feet beyond my fence. Within those four feet are privacy bushes that my grandfather planted. During the construction phase of Mr. Smyth's variance project, these bushes should not be disturbed, as they provide privacy for both properties. If for some reason they are disturbed, they should be restored by the applicant.*

*Again, I'd like to express my congratulations to Mr. Smyth on his application, and I thank him and his construction team in advance for respecting my property and landscaping.*

*Sincerely,  
Chelsea Zantay*

MT asked the Smyth brothers for their thoughts, to which they said they were all for the bushes but were unsure specifically which bushes she was referencing and would seek to confirm location.

With no further public or written comments MT motioned, seconded by SB and unanimously approved to close the public hearing at 7:15pm.

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

MT then individually covered each criterion:

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.*

It is the determination of the Board that no undesirable changes will be produced because of this project. SB said it is an improvement.

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.*

It is the determination of this Board that there is not an alternative method to achieve the desired outcome and the historical footprint was being maintained.

3. *Whether the requested area variance is substantial.*

It is the determination of this Board that the area variance being sought is not substantial. It is on the minor side and below the typical average.

4. *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.

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.*  
As with many Area Variance requests before this Board, the difficulty was self-created.

A motion was made by MT, seconded by AL, and unanimously approved identifying this Board as Lead Agency and classifying the proposed action as a Type II Action under the State Environmental Quality Review Act (SEQRA).

MT motioned; seconded by AL, and unanimously approved to grant approval of the requested Area Variance on the condition that the bushes between 37 Blue Heron Rd and 35 Blue Heron Rd remain.

**Area Variance Application with Public Hearing**

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 in association with a Special Use Permit Application.

Jake Lehman representing Archtop Fiber summarized the project which had been initially presented at the October 12, 2023, ZBA meeting.

With no additional questions from the board MT motioned; seconded by DH and unanimously approved to open the public hearing at 7:20PM.

At this time Stacy Smith, 74 Sheer Rd, approached the board. She said she has spoken to Jake, and they have no problems with the Variance but would like to ensure there will be natural screening.

MT confirmed with Mr. Lehman that he was going before the Planning Board for a Special Use Permit. SB explained the purpose of this board, and this is something that should be put forth to the Planning Board.

With no further public or written comments MT motioned, seconded by AL and unanimously approved to close the public hearing at 7:24pm.

MT then individually covered each criterion:

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. It is the determination of the Board that no undesirable changes will be produced because of this project, adding this is an ideal location for this plan.
3. *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 /surrounding area, adding that the applicants have made this as small as possible and are only looking for a 2' variance.
4. *Whether the requested area variance is substantial.*  
It is the determination of this Board that the area variance being sought is on the minimal side and below the historical average.
5. *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.
6. *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.*
7. It is the determination of this Board that, as with many Area Variance requests before this Board, the difficulty was self-created.

MT motioned, seconded by AL and unanimously approved identifying this Board as Lead Agency under SEQR on a coordinated review with the Planning Board.

MT motioned, seconded by AL and unanimously approved to classify the project as an Unlisted Action and gave it a Negative Declaration for any environmental impacts.

MT motioned, seconded by AL and unanimously approved to grant approval of the requested Area Variance.

MT motioned, seconded by AL and unanimously approved that the minutes of this meeting reflect the receipt of public comments for a Vegetative Screen in addition to fencing and that the ZBA is in support of it, but it is ultimately at the discretion of the Planning Board.

**Area Variance Application with Public Hearing**

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 summarized the project which had been initially presented at the October 12, 2023, ZBA meeting.

With no additional questions from the board, MT motioned, seconded by AL and unanimously approved to open the public hearing at 7:34PM.

John Windover, 2561 NY 43, presented concerns regarding the overgrown landscaping as it makes it difficult for him to maintain his property. He said it has been discussed between himself the Brucatos and Frenches and were all in agreement to keep the side yards clear of overgrowth, but he was hoping to have it stipulated on the record.

Brian French, 2567 NY Highway 43, had the same concerns as notated by Mr. Windover.

With no further public or written comments, MT made a motion, seconded by DH and unanimously approved to close the public hearing at 7:43pm.

MT motioned, seconded by DH and unanimously approved identifying this Board as Lead Agency under SEQR.

MT motioned, seconded by SB and unanimously approved to classify this action as a Type II Action under the State Environmental Quality Review Act (SEQRA) with no further action required by the ZBA.

MT then individually covered each criterion:

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.*  
The Board agreed that there could be undesirable changes, however, it is resolved with a special condition herein.
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.*  
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.
3. *Whether the requested area variance is substantial.*  
Board members agreed that the area variance is in the middle of average for Area Variances being sought.
4. *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.

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.*

It is the determination of this Board that, as with many Area Variance requests before this Board, the difficulty was self-created.

MT motioned seconded by AL and unanimously approved to grant approval of the requested Area Variance. Conditioned that after construction is complete, that along side the house and garage in its entirety is sodded and maintained as long as practical.

**Area Variance Application**

Kimberly Ostrander & Peter Chuckta  
401 Millers Corners Rd  
East Greenbush, NY 12061  
AR-Agricultural Residential Zoning District

**Tax Map #:** 169.-2-29.1  
**Lot Size:** 11.17 +/-acres

An Area Variance Application for insufficient depth to width ratio in association with a Boundary Line Adjustment Application (BLA Applicant Todd Scaccia).

The application was presented by Kevin McGrath. He presented the map explaining what the applicant was interested in accomplishing and why. He also reviewed the location of the Wetlands located on the property. Mr. McGrath confirmed that Mr. Scaccia is the applicant, Ms. Ostrander and Mr. Chuckta were willing to help him with an adjustment in the Boundary Lines to allow him better property access, with the stipulation that Mr. Scaccia handle the entirety of the Boundary Line Adjustment Application. DH talked about the Wetlands.

With no further questions from the board MT motioned, seconded by AL and unanimously approved to deem the application complete.

MT motioned seconded by DH and unanimously approved to schedule the public hearing for December 14 at 7:00PM.

**DRAFT RESOLUTION FOR APPROVAL**

**Area Variance for Frank Maier AV 23-08**

MT motioned, seconded by DH and unanimously approved to accept the draft resolution as final

**Area Variance for Michael Ernest AV 23-09**

MT motioned seconded by AL and unanimously approved to accept the draft resolution as final.

**DRAFT MINUTES FOR APPROVAL**

MT motioned, seconded by DH and unanimously approved to accept the October 12, 2023, minutes as presented

**ADJOURNMENT** – MT motioned, seconded by DH and unanimously approved to adjourn the meeting at 7:52PM.