

**TOWN OF SARATOGA
ZONING BOARD OF APPEALS MINUTES
June 28, 2010**

Chairman Stephen Bodnar called the meeting to order at 7:00 p.m. and led the flag salute.

Chairman Stephen Bodnar explained the *Rules of the Board*.

Zoning Clerk Linda McCabe called the roll: Chairman Stephen Bodnar – present, Clifford Hanehan – absent, Thomas Carrangi – present, Barbara Faraone – present, William Moreau – present, James Burke – present, Clarence Fosdick – present, and Alternate John Deyoe – present.

Due to the absence of Board Member Clifford Hanehan, Chairman Stephen Bodnar elevated Alternate John Deyoe to full voting status.

Also present: Zoning Officer Gil Albert, Town Attorney William Reynolds, and Matthew Mincher. (Sign-in sheet is on file in the Clerk's office)

Approval of Minutes: **A motion was made by Board Member James Burke and seconded by Board Member John Deyoe, to accept the minutes of the May 24, 2010 meeting.** Chairman Stephen Bodnar–aye, James Burke – aye, Barbara Faraone– aye, Thomas Carrangi - aye, Clifford Hanehan -absent, William Moreau - aye, Clarence Fosdick - aye, Alternate John Deyoe – aye.

Carried 7 – 0

Approved

Order of Business:

Area Variance

**Matthew M. Mincher #10-07
63 Springwaters Dr.
Saratoga Springs, NY 12866
S/B/L 206.6-3-8 Lake Residential**

Returning Applicant is seeking a frontage variance of 80' and an area variance in order to move an existing cabin onto his 6.06 acre parcel to establish a second detached home.

Returning Applicant appeared before the Board stating he had been before this Board in April and was sent to the Planning Board; the Planning Board denied him due to frontage, although half of that Board found this favorable, and he is now here appealing that denial. He added he had been granted a variance in 1996 to build his home and hopefully he will get this variance. He looked up a couple of things in the regulations for the Lake District. He then read the district's preamble:

“It is the purpose of this zoning district to ensure orderly development and redevelopment of seasonal and year-round dwelling units and recreational uses in that area of the Town where such development occurs. It is the intent of this zoning district to encourage the redevelopment and rehabilitations of the seasonal dwellings and customary associated land uses, the reduction of densities and larger waterfront lots.”

The Applicant felt that in the sense of it, he is not out of line and or character with wanting to do this. He then looked at the Multiple Use Section of the regulations and read “Unless otherwise allowed by this chapter, no more than one principal building and/or use shall be established on any lot; except,

however, that upon application to and approval by the Town Planning Board, more than one one-family detached dwelling unit may be placed on a lot, 'provided that each one-family dwelling unit is so sited as to meet the minimum area, width, frontage and yard requirements of the zoning district in which said lot is situated'. Additionally, every one-family dwelling unit so placed shall be served by a separate sanitary sewer and water supply required by §400-8 through 400-8.13 and 400-9 of this chapter."

He then stated he has plenty of room there, 6+ acres; he just needs the frontage variance. It is on a private road and it states in the regulations that you can put up to four dwellings on an acre in this district. He only wants two dwellings on his 6+ acres; his home and the cottage he'd like to put on his property. The Applicant thinks this is a good cause to do this and would like a variance to do so.

Chairman Stephen Bodnar stated the Public Hearing for this application was held on April 26, 2010. To clarify on the Applicant's previous variance, the 1996 variance was granted in order for the Applicant to build his home. The Applicant agreed. Chairman Stephen Bodnar asked if the Board had any questions.

Board Member John Deyoe stated he is fairly new to this Board and hasn't had a lot of experience with this type of application. He questioned if the Board has allowed second variances for frontage in the past, because he believes it is their job as the ZBA; then the Planning Board would need to do the second dwelling. He then asked if the Board grants the variance, will the Applicant have to return to the Planning Board and Chairman Stephen Bodnar said yes, if we approve the variance, the Applicant has to return to the Planning Board for approval for the location of the cottage. Board Member John Deyoe stated it seems that the ZBA has done something similar to this on Louden Rd. when he first became a Board member. Chairman Stephen Bodnar responded yes, that Applicant needed a side variance and a duplex would have been allowed; a single home would have needed it's own road, but they couldn't do that, the property was deep but narrow, and they didn't want the house too close so he was to do something like a 40' breezeway, Board Member Barbara Faraone added or a breezeway over the road to connect a house. Chairman Stephen Bodnar then questioned Board Member Barbara Faraone if she could recall the name of someone at the lake that had a house on the front of the property and then built another house in the back and she said yes, Peter Curto. Zoning Officer Gil Albert stated he would have needed a variance to do that. Board Member John Deyoe added he would have needed a frontage variance and Chairman Stephen Bodnar responded yes. Board Member Barbara Faraone said the Board did a shared driveway there.

The Applicant said he has sewer and Chairman Stephen Bodnar stated that is why the Applicant needs only an 80' frontage variance; if he didn't have sewer he would need 150'.

The Applicant said he believes this has been done a couple of times at the lake, even on Fitch Rd. Chairman Stephen Bodnar responded yes, with Mr. Gasser. He explained the location of Mr. Gasser's property to the Board; as you come off of the lake road and onto Fitch Rd. there's the camp close to the road and they have a swamp lot right in back; bottom of the DeRusso property where the water drains down, back in there. Chairman Stephen Bodnar stated one of the fears the Board has is that the Applicant's property is such a large lot, that in the future the Applicant may find it financially feasible to add more houses there. The Planning Board requires that the placement of a second home on a property be able to be legally subdividable. The Applicant responded he couldn't do it; he has a mortgage on the house and the bank won't let him decrease the asset, and he doesn't want to subdivide it. He stated he is never selling his property, its family property; has been since the 1930s. He has one young son and if he ever considered putting another house on it for his son, twenty years or so down the road, he would go to the Planning Board, but would never sell. Board Member Barbara Faraone asked who owns Springwaters Dr. and the Applicant replied he does; she said you own the road and he responded yes. Board Member Barbara Faraone stated all those roads off of that, including hers, are privately owned. The Town wouldn't take them; so they all went to the county and they had to buy them at auction because of the state highway at the time. Almost all the roads off the lake are

privately owned; they may not be a true public highway, but they have ownership.

The Applicant stated there's a lot of frontage on Springwaters, several hundred feet. He doesn't want to cramp anything there, he has 6 acres, he has spoken with Stan Barber of Larmon's and he can move the cottage on there. If approved for this variance he can do this, but there is a time frame of September because that is when it has to be removed from their property or be destroyed. It just makes common sense, it won't hurt anyone, you can't see it from Hill Rd., you would barely see it half way up the driveway. It won't hurt anyone and there's no negative impact with allowing this. He stated he has had neighbors phone him asking who they can call in support of this. He notified his neighbors and gave them all his plot plans and gave them free access to his property to see where he'd like to place the cottage. At the public hearing most everyone was supportive; had a couple questions of Hill Rd. residents but when they realized they wouldn't see it they were fine. This will not set a precedent, he's not going to advertise it, he doesn't believe it will hurt anyone and he knows similar actions have been granted in the past. The Board agreed that none of the neighbors at the public hearing had a real problem with this.

Chairman Stephen Bodnar stated if the Board grants the variance, does the Applicant object to the Board stipulating no more residences on the property and the Applicant responded in the future, if his son wants to build a house, will he be allowed to subdivide two acres off for him and if so he has no objection at all to that stipulation.

Chairman Stephen Bodnar then questioned Town Attorney William Reynolds if they could legally put that in their motion; allowing him an accessory building such as a garage or shed, but no other residences and Town Attorney William Reynolds responded that this is unique; the background on law §400-8.11, he believes, was added to the zoning ordinance in 1983, which was two to three years after the ordinance was adopted. It was added to the original ordinance to accommodate farmers to place tenant houses without subdividing their lands, providing that the residence met all area requirements of a single family dwelling if at some time they wanted to subdivide. Board Member William Moreau clarified that the background was if any dwelling were added to the property, in later years it could be subdivided legally without any variances, to accommodate the law that was adopted.

Town Attorney William Reynolds responded not that anyone participated, but in keeping consistent with the Planning for the whole Town, that it be so situated that it was subdividable according to our area regulations. He then stated we now have this application, and the Board needs to question if this is totally up to the Planning Board or is it an area where the ZBA should give input into it. The first thing to consider, not saying the Board can't, but you need to look at the language of the statute; do you want to grant variances for this sort of thing or does our law say unequivocally that it's a Planning Board issue and not a Zoning Board issue in any way. Assuming you do feel the Zoning Board has carte blanche to grant variances within these different areas of regulations in this section, you just go back to the usual standards you would apply to any variance, using the variance criteria in our regulation books.

The Applicant stated when he was at the Planning Board meeting and was denied, he was told the ZBA has the power to overturn their decision and that is the only reason he is here tonight. He added he is not a professional in this field but it seems clear this Board would not be stepping on the Planning Board toes. The Applicant felt that two of the Planning Board members felt very favorably for this and the other two not so much; not that they had anything against it, just go according to the rules. Looking at Multiple Use it looks like you want properties out there; you allow four per acre. I just want two on six acres. This just doesn't seem unreasonable.

Town Attorney William Reynolds stated, to answer Chairman Stephen Bodnar's earlier question of can this Board attach a condition saying no to further houses on this parcel; no this Board can't say that. It always goes back to the Planning Board.

Chairman Stephen Bodnar questioned if they have the power to grant these variances. Board Member James Burke believes they do. Board Member John Deyoe added that the ZBA's decision is for frontage and area variances and he also questioned the Town Attorney if the Board has the right to do

this. Town Attorney William Reynolds responded someone can say you can and someone can say you can't.

Chairman Stephen Bodnar stated he doesn't want to do anything wrong and doesn't want to deny the Applicant his due process. This Board has an opportunity to do something good here.

Board Member John Deyoe questioned if any Board Member had looked at the cabin, adding a lot of work went in to refurbishing it. Chairman Stephen Bodnar responded he has looked at it and agreed with him. The Applicant stated it would be a crime to tear it down.

Board Member Barbara Faraone asked the Chairman to go down the ZBA's criteria and balance test with the Board. Chairman Stephen Bodnar read the following:

New York Planning Federation Summary of Area Variance Criteria

Balancing test – Board of Appeals shall balance benefit to applicant with detriment to health, safety & welfare of the community.

Board of Appeals shall also consider:

1. whether benefit can be achieved by other means feasible to applicant;

Board responded no

2. undesirable change in neighborhood character or to nearby properties;

Board responded no

3. whether request is substantial;

Board responded undetermined

4. whether request will have adverse physical or environmental effects;

Board responded no

5. whether alleged difficulty is self-created;

Board responded no

If approved shall grant minimum variance necessary, and may impose reasonable conditions.

Chairman Stephen Bodnar stated 4 out of 5 are answered no, so whether the request is substantial or not, with the size of the parcel that is involved he doesn't believe so; so is this request too substantial, no. It is 6 acres and would only have 2 houses, and if he wanted another structure, he would go before the Planning Board.

Board Member Clarence Fosdick stated you have an island of 6 acres in the middle of a sea of 40' lots, 50' lots, 75' lots.

Town Attorney William Reynolds stated you say is this variance substantial. Substantial is the part that requires the variance; substantial difference from what is required, not if this is a big deal or not. It's the area, the distance, the feet, the percentage, whatever; is it a substantial variation of the regulations, is it a substantial request.

Zoning Officer Gil Albert stated his opinion is this Board has granted much more substantial variances than this, he feels the Board should grant this. In the overall view he does not think this is substantial.

Board Member Barbara Faraone stated she believes they are to base their decisions on the five Area Variance Criteria. Chairman Stephen Bodnar stated he does not believe this will be a detriment to any neighbor. The Board agreed. Board Member John Deyoe stated 6 acres is a lot out by the lake.

He added that the Zoning Officer has stated he views this positively. Zoning Officer Gil Albert added that the Board has granted more significant variances in the past, this keeps with the character of the community, he owns the road, there are other residences on that road that are closer and tighter than what he is trying to do. Board discussion continued. Chairman Stephen Bodnar stated it is difficult

looking at the downside of this when they've allowed 40' breezeways. If anyone at the lake owned 6 acres and had a right of way to it and wanted to put two single family dwellings on it, he'd have no problem with allowing that. Board Member Clarence Fosdick added that the Planning Board could require that the cottage be placed where it leaves the house on 2 acres, because one never knows the future.

Board Member William Moreau stated he thinks the intent of that law was to serve farmers and as these come before the Board he feels it will get stretched and transformed and abused at times, putting multiple dwellings on a lot.

Board Member John Deyoe stated if the Applicant didn't need frontage he wouldn't have been here and Board Member William Moreau said but he does need the frontage. Zoning Officer Gil Albert stated he doesn't see a major problem with this. He knows Chairman Ian Murray felt it would set a precedent; asking what is the precedent. Board Member William Moreau responded it's already been set and that's the problem.

Zoning Officer Gil Albert questioned the downside to setting a precedent in this situation when the Board allows two family attached homes that are attached with a breezeway. Let's look at the intent of the law, let's control the amount of the area we have; we keep it down to 2 acre parcels. Significant would be if he wants to split a two acre parcel into a one acre parcel, that's a significant thing, but he has 6 acres of land and he's keeping the cabin/cottage far enough away; he has his distances and meets all the setbacks. Zoning Officer Gil Albert believes it's a case by case situation and he doesn't think this is setting any precedent.

Board Member Barbara Faraone stated that's what this Board is here for. Board Member William Moreau stated there's a lot of leeway in that law/ordinance. Zoning Officer Gil Albert said that law was put there for the farmers; for their families and tenant housing, adding do we go around checking that they keep to the law with the regulated distance/separation between the houses, etc.

Chairman Stephen Bodnar re-read the letter from the Saratoga County Planning Board indicating no significant county wide or intercommunity impact.

He then stated the Town Planning Board denied because of no frontage, with no notation of negative comment.

Clarence Fosdick made a motion, seconded by Barbara Faraone, to grant the variances requested because it is consistent with the surrounding neighborhood and not causing an undesirable change in the neighborhood character or nearby properties as evidence by most of the neighbors being favorable to this at the Public Hearing on April 26, 2010, it doesn't appear that this can be achieved by any other reasonable means, it doesn't appear to be a substantial request, it doesn't appear to have adverse physical and environmental effects, and it doesn't appear to be self-created. Chairman Stephen Bodnar—aye, James Burke – aye, Barbara Faraone—aye, Thomas Carrangi - aye, Clifford Hanehan -absent, William Moreau - aye, Clarence Fosdick – aye, Alternate John Deyoe – aye. **Carried 7– 0**

Approved

Board discussion continued on all the side roads at the lake, noting that they have granted variances for a barn for antique cars in the back of a property there, and if you walk those roads you will find there are many houses built behind houses on those little lots and in many cases you have to be a monkey to get to some of them. The Applicant stated this is a 6 acre parcel, so this is really a good thing. Chairman Stephen Bodnar stated it's very populated there and it's just the way it is at the lake. He then stated the Board did a good job with this and thanked Zoning Officer Gil Albert and Town Attorney William Reynolds for their input.

Old Business: None

New Business: None

Barbara Farone made a motion, seconded by William Moreau, to adjourn the meeting at 7:57 p.m. Chairman Stephen Bodnar–aye, James Burke– aye, Barbara Faraone– aye, Thomas Carrangi-aye, Clifford Hanehan-absent, William Moreau-aye, Clarence Fosdick-aye, Alternate John Deyoe – aye. **Carried 7 – 0**

Adjourned

The next Zoning Board of Appeals meeting will be held July 26, 2010.

Respectfully submitted,

Linda McCabe
ZBA Clerk