

**TOWN OF SARATOGA
ZONING BOARD OF APPEALS MINUTES
June 22, 2009
7:00 PM**

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 –present, Thomas Carrangi –present, Barbara Faraone –present, Bill Moreau –present, James Burke –present, Clarence Fosdick – present, and Alternate John Deyoe – present.

Also present: Zoning Officer Gil Albert, Attorney William Reynolds, and many interested persons. (Sign-in sheet is on file in the Clerk’s office)

Chairman Stephen Bodnar stated that since there is a full Board tonight, Alternate member John Deyoe will not be voting, though his input is very welcome.

Approval of Minutes: **A motion was made by Thomas Carrangi and seconded by Bill Moreau, to accept the minutes of the April 27, 2009 meeting as written.** Chairman Stephen Bodnar–aye, James Burke– abstained due to absence, Barbara Faraone– abstained due to absence, Thomas Carrangi-aye, Clifford Hanehan-abstained due to absence, William Moreau-aye, Clarence Fosdick-aye.

Carried 4 – 0

Approved

Order of Business:

AREA VARIANCE

**Mr. John DeAugustine #09-03
1330 Rt. 9P
Saratoga Springs, NY 12866
S/B/L # 193.10-1-8 Lake Residential**

Applicant proposes to build a new 13’ x 12’ deck coming off the front of his existing house and is seeking an area variance and front setback variance because he does not meet the zoning regulations for lot width and road setback requirements.

The Applicant appeared before the Board and presented photos of his house and of neighboring decks, stating his house was built with the intent of an attached deck and one can see ‘ the cut out’ where it was intended to go on the house. After viewing the photos the Board agreed they could see where it was intended to go. Chairman Stephen Bodnar stated that the Applicant is here because the Zoning Officer noticed that he was building a deck and didn’t have a permit. The Applicant replied correct. Chairman Stephen Bodnar questioned if the Applicant had poured the concrete patio himself and was told no, it was poured before he purchased the house. He added the proposed deck will come out to the existing patio but not beyond it. Thomas Carrangi stated it looks like the Applicant is the only one out there without a deck. Zoning Officer Gil Albert stated he is fine with the proposal; the Applicant just needs the variance and to complete the paper work. Chairman Stephen Bodnar asked if there were any other questions; there were none.

After providing Proof of Notice in the Saratogian on June 12, 2009, Chairman Stephen Bodnar opened the Public Hearing at 7:09 p.m. asking those wishing to speak to please stand and state their name and address. No one came forward.

Chairman Stephen Bodnar asked the Board if there were any more questions; finding none,
Chairman Stephen Bodnar closed the Public Hearing at 7:10 p.m.

Barbara Faraone made a motion, seconded by Thomas Carrangi to approve this variance for the 12' x 13' deck as presented and to grant the area variances as applied for because it is keeping within character, does not infringe on what is already there and essentially does not affect the surrounding area. Chairman Stephen Bodnar-aye, James Burke- aye, Barbara Faraone-aye, Thomas Carrangi-aye, Clifford Hanehan-aye, William Moreau-aye, Clarence Fosdick-aye. **Carried 7 -0**
Approved

Christopher J. Pleskovic #09-04
1406 Rt. 9P
Saratoga Springs, NY 12866
S/B/L 193.6-1-49 Lake Residential

Applicant proposes to build a 12' x 19' treated deck off the side of the existing house and is seeking a front setback variance of 15' and back setback variance of 3' because he does not meet the zoning regulations for front and side setback requirements.

The Applicant appeared before the Board, handing in his neighbor notifications and explaining how the proposed second story deck with a stairwell going down the front of the deck, will be over the attached 12' x 20' garage. It will be built off the south side of the house and between the attached garage and the detached shed/garage with supports below, where there would be enough space for a small car to park. Barbara Faraone questioned if the Applicant was going to wall this area in and he said no, it will remain open. The reason for the variance is because it will be approximately 35' back from the road; not the required 50' and only 7' from the back property line, not the required 10'. He showed exact boundary lines of his property and the existing buildings and Zoning Officer Gil Albert stated that the Applicant owns a nice piece of property across the road which is part of this lot and is well within regulations of percentage of coverage. He added that he sees no problems with this proposal; it stays within the scope of the surrounding homes there. Chairman Stephen Bodnar questioned if the Applicant plans to cover the deck in the future and was told no.

After providing Proof of Notice in the Saratogian on June 12, 2009, Chairman Stephen Bodnar opened the Public Hearing at 7:27 p.m. asking those wishing to speak to please stand and state their name and address. No one came forward.

Chairman Stephen Bodnar asked the Board if there were any more questions; finding none,
Chairman Stephen Bodnar closed the Public Hearing at 7:28 p.m.

Clarence Fosdick made a motion, seconded by Bill Moreau to approve this application as presented for a 12' x 19' deck and to grant the variances as applied for because it is consistent with the existing development in that area, it is consistent with area variances and setbacks for that road, it will not infringe any closer to the road and requires only a 3' setback on the rear lot and it is keeping within character and essentially does not affect the surrounding area. Chairman Stephen Bodnar-aye, James Burke- aye, Barbara Faraone-aye, Thomas Carrangi-aye, Clifford Hanehan-aye, William Moreau-aye, Clarence Fosdick-aye.
Carried 7-0
Approved

Saratoga Builders, LLC #09-05
8 Campion Ln.
Saratoga Springs, NY 12866
S/B/L 168.7-1-2, 3, 4, 5, 6 Rural

Burgoyne Estates
Anthony Lane
Saratoga Springs, NY 12866

Applicant would like to turn 5 lots; out of the original 12 lot Burgoyne Estates subdivision; into 7 lots, creating a 14 lot subdivision and is seeking numerous variances due to the noncompliance of those lots. This is located on Anthony Lane, off of Burgoyne Rd. This Applicant appeared before the Planning Board with this application, was denied, and is now appealing before the Zoning Board.

Applicant Sam Palazolle of Saratoga Builders appeared before the Board, stating that when he built the Burgoyne Estates development he did so believing \$900,000 homes would sell but this community doesn't support the sale of homes in that price range. There is no market here for \$800,000 homes; if the Board approves these area variances and frontage variances and gives him two more lots he can build houses in the \$500,000 range and sell for \$600,000 in that development. He then went over the original subdivision plans and the changes he would like to make, emphasizing he would like 150' frontage on those 5 lots and 4 of those lots will be less than 80,000 sq. ft. and he then handed in a petition of nine signatures of town residents who like his plan. His attorney John Carasone spoke before the Board telling them what they need to do to reach their decision and requested relief for his Applicant. Chairman Stephen Bodnar stated he is aware of this subdivision and the controversy surrounding it. He then questioned the Applicant why those particular lots were chosen to be made smaller and the Applicant replied due to wetland constraints.

James Burke stated it doesn't look good for the Applicant but it doesn't appear the Applicant did his homework with the land prior to purchase.

The Applicant replied as affluent as this area may appear to be, it really isn't. There may be some wealthy people around, especially during the track season, but the reality is this is primarily an agricultural community in the Town of Saratoga and Saratoga Springs is a small city. He felt that \$700,000 - \$800,000 homes were viable, but he was wrong. He added that even if the economy turns around here, he wouldn't be able to sell those proposed houses at \$800,000. So after working in this community for a number of years, they have come to the conclusion that the need in this community is not for the level of houses they had originally anticipated.

Barbara Faraone questioned how many homes in that subdivision have sold and was told none. She then stated she has a hard time with this application and is against changing those 5 lots. It may be a hardship for the Applicant, but the Applicant should have done due diligence prior to purchase. This is a farming community and has been for a long, long time. The Applicant should downsize the homes he plans to build there.

The Applicant replied he cannot afford to do that.

Barbara Faraone responded that she believes this may be a bump the Applicant needs to take; this is not a hardship, it is self imposed and it would change that development. This is a rural district and you can't change it into a glorified housing area.

Bill Moreau stated that when the Applicant was first looking to build this subdivision and was in the early stage of design, he knew he wanted 14 homes there and knew from the Planning Board that due to wetlands etc. he could only put in 12, the price point was known at that time. So the core problem was in front of the Applicant way back then; the Applicant should have stopped then, back in 2004.

Clifford Hanahan stated he knows the economy is difficult now; he has a business in town and wishes he could go to a Board and get relief but unfortunately that is not the way it works. Some of these problems the Applicant is dealing with are being dealt with by many in this town and all over our country right now, but he is not inclined to grant this for the Applicant at all. He added that the Town has regulations and he is holding to those regulations.

Clarence Fosdick stated his concern is the precedent this sets and he agrees with Clifford Hanahan.

The Applicant stated from what he has seen the Planning Board seems inclined to approve conservation subdivisions and by definition that means 150' frontage, 1 acre lots, which allows the developer the opportunity to build smaller homes, which obviously this market calls for.

Chairman Stephen Bodnar asked the opinion of Zoning Officer Gil Albert. Zoning Officer Gil Albert stated that he agrees this would set a bad precedent, he disagrees with the Applicant's ratio, explaining when you get to a certain dollar value of homes that people are spending money on, they expect a certain lot size. By downsizing these lots, it will be degrading the Applicant's ability to sell at that price market. If this were Schuyler Point, basically that's what the Applicant is comparing this downsize to, the price point there was selling; but not at the \$600,000 - \$800,000 market he still wants for this proposed downsized re-subdivision. Barbara Faraone stated if this were approved, it would be like a domino effect; any developer can come back if their developments don't sell. This would set a bad precedent. Bill Moreau stated with an approval a precedent is set for future developers, he is opposed. Chairman Stephen Bodnar stated the Planning Board is opposed to this and they've sent the Applicant here with no recommendation. Chairman Stephen Bodnar then read the Saratoga County Planning Board's letter stating their disapproval:

'Decision: Disapprove. The Saratoga County Planning Board feels that the number of area variances required, for the requested change in the number of lots in the subdivision are excessive. If the Town grants these variances as requested, it could create a precedent in the Town that circumvents the Zoning Ordinance. Additionally before the re-subdivision could be approved it would require review by the NYS Department of Health and possible re-design of the proposed septic systems due to the reduction in lot size.'

Chairman Stephen Bodnar then read a letter from Anthony and Gloria Swiatek, neighbors of the subdivision, adamantly voicing their opposition to the Applicant's request. This letter is on file in the Clerk's office. He then read the petition the Applicant supplied and that too, is on file in the Clerk's office.

Chairman Stephen Bodnar then stated that due to the letter of negative declaration from the County Planning Board this Board requires a minimum of 5 positive votes on this application for approval.

After providing Proof of Notice in the Saratogian on June 12, 2009, Chairman Stephen Bodnar opened the Public Hearing at 8:05 p.m. asking those wishing to speak to please stand and state their name and address.

The following persons addressed the Board voicing their opposition:

Frank Naret, 366 Burgoyne Rd., spoke to clarify earlier comments from Saratoga Builders that the Planning Board was against a conservation subdivision out there; Mr. Naret was at the Planning Board meetings of this subdivision and the Applicant was told very adamantly by that Chairman that they should buy the Town's subdivision documents because the first order of business was to consider a conservation subdivision. At the second meeting they came back and the Board again stressed a conservation subdivision; to be creative with their design and stressed the point of them utilizing the natural contours of the land. They came back again and essentially drew a 75' buffer around it and said 'there's your conservation subdivision' and once again the Board said that's not it; get a bit more creative and at the next meeting the Chairman of that Board unilaterally addressed the Board and visited the property and said a conservation subdivision wouldn't work the way the developer wants to do this. So they were first told to do a conservation subdivision. I am opposed to this.

Renee Fallon, 386 Burgoyne Rd. Opposed.

Marilyn Zaborek, 387 Burgoyne Rd. Opposed

Mary Field, 366 Burgoyne Rd. Opposed

Chuck Carlstom, 344 Burgoyne Rd. Opposed

Chairman Stephen Bodnar asked if there were any more questions; finding none, **Chairman Stephen Bodnar closed the Public Hearing at 8:23 p.m.**

Board discussion continued with Town Attorney William Reynolds clarifying Town Law 267B; stating that section takes precedence over the exact language of town subdivision regulations and some of the evidence presented tonight is very relevant to the criteria for area variances, adding the Board needs to ask themselves what is the benefit to the property owner verses what is the detriment to the Town or the neighborhood if you were to allow the variances; that is the basic question to answer. Within that, the legislature puts forth five criteria for the board to consider whether there is a benefit or detriment and whether the benefit outweighs the detriment. It is relatively clear from the evidence that there's to be no undesirable change in the character of the neighborhood; can the benefits the Applicant seeks be achieved by any other method aside from the area variances. Nothing has been spoken on that tonight and he'd like the Board to ask the Applicant if there is anything they can add. The Applicant responded they had Tommell look at this and there is nothing else they can do. Town Attorney William Reynolds stated he feels the record is insufficient on that and suggested the Applicant supply reports from Tommell & Assoc. with their findings to this Board. He also added that another criteria is whether the requested area variances are substantial, in some cases the Boards and some courts will use a percentage figure; from what the Applicant presented there are variances of 20% - 30%, which is a lot more than 5% - 15% which is an issue of substantiality which is usually a criteria this Board delves into quite a bit at these meetings and that hasn't been brought up at all tonight. He also stated that according to the neighbors there is adverse environmental impact in that area. The criteria of environmental impact in the neighborhood would require engineering reports submitted to this Board or some other Board, but this Board is in no position to decide if that criteria has been met. He added he believes that the Applicant's economic hardship is self-created and economic hardship has nothing to do with this criteria of the law. Hardship has to do with the land itself; be it the shape of it, the size of it; some difficulty to do with the land whereby the Applicant has to have some relief from this in order to do some permitted use. Whether this lot is selling or that is not selling has nothing to do with the land and is irrelevant to the issues the Board has to consider. The Board's duty shall be to grant as minimal variances as necessary. These are substantial; the extent is in the number of variances and there are many. The County Planning Board hit the nail on the head when it said that the number of area variances that the Applicant is asking this Board to consider is extensive, and in Town Attorney William Reynolds' opinion it takes the authority of the Town Planning Board, who just put it to the Zoning Board where it does not belong, to make that decision. It is the Planning Board who should be looking at planning, development, lot sizes, engineering and all those issues. It is not for the Zoning Board of Appeals to dictate that by saying 'we grant this variance and like the lots the way they were presented' and send it back to Planning Board with that type of recommendation. Town Attorney William Reynolds then suggested that either the Board vote or table this; the Board can postpone awaiting more information from the Applicant, which he believes is fair to the Applicant, or take a vote. He also told the Applicant he needs to reconsider his plan. Town Attorney William Reynolds continued stating that if the vote doesn't go the way the Applicant wants he can go back to the Planning Board. Typically what the Zoning Board gets from the Planning Board is someone who has gone before the Planning Board with a subdivision application and there would have been one issue they may have needed a variance on and the Planning Board would grant it if the Applicant could get a variance on that one issue. But for the Planning Board to throw this whole thing back at Zoning; they are trying to make us decide the whole issue of the subdivision and I do not think we should be doing that.

Chairman Stephen Bodnar stated in his opinion the Planning Board **did** make a decision on that original subdivision on what they had approved. But when the Applicant went back to them with additional lots proposed, they denied it and sent him to the Zoning Board of Appeals with no recommendation. He stated he believes that if the Board votes on this application tonight it will be denied. It is the Applicant's option to postpone and come back with more information or the Board can vote tonight. The Applicant stated he will take the option of postponing.

Chairman Stephen Bodnar made a motion, seconded by Thomas Carrangi to postpone this application until the Applicant is able to come back with more information. Chairman

Stephen Bodnar-aye, James Burke- aye, Barbara Faraone-aye, Thomas Carrangi-aye, Clifford Hanehan-aye, William Moreau-aye, Clarence Fosdick-aye. **Postponed 7 -0**

Returning

Thomas A. & Paula A. Marotta #09-07
2000 Barrett Rd.
Ballston Spa, NY 12020
S/B/L 193.6-1-21 Lake Residential

Location: 1380 Rt. 9P
Saratoga Springs, NY
12866

Applicant is seeking a height variance of 1'3" because he does not meet zoning regulations.

Applicant Thomas Marotta appeared before the Board and handed in his neighbor notifications. Chairman Stephen Bodnar read the minutes of the August 25, 2008 meeting where Zoning Officer Gil Albert stated that he believed maximum height was 35'. Chairman Stephen Bodnar apologized to the Applicant for the error in height allowance, stating he should have opened the regulations book to double check and did not do so. He then read the neighbor notification letter to the Board with a lengthy list of signatures. He stated the roof is at 31'3" and regulation is 30', so it is 1'3" over. Zoning Officer Gil Albert stated they are all at fault; he himself nor the Board verified that height was not at 35' so the Applicant believed he was within code. Chairman Stephen Bodnar asked the Board if they had any questions; there were none. Chairman Stephen Bodnar asked Town Attorney William Reynolds for his input. Town Attorney William Reynolds stated that legally it doesn't seem to be a substantial variation of the code requirements of 5%. Zoning Officer Gil Albert stated that after responding to complaints from certain neighbors on size and everything else, he went and checked the property and house. When Zoning Officer Gil Albert had questioned the roof height, Mr. Marotta volunteered the height at 31'3" believing he was in compliance. Zoning Officer Gil Albert stated the Applicant is in compliance with all the specifications the Board set forth; this is the only thing out of compliance. Zoning Officer Gil Albert then explained the drainage again and explained those issues were all taken care of in the past; this is only about a height variance.

After providing Proof of Notice in the Saratogian on June 12, 2009, Chairman Stephen Bodnar opened the Public Hearing at 8:50 p.m. asking those wishing to speak to please stand and state their name and address and reiterated this is for height variance.

Neighbors listed below stated their **disapproval of past issues** on this application:

Cathy Lorenze, 1389 Rt. 9P
Mike LaFranc, 1389 Rt. 9P
Mr. & Mrs. Rich, 1378 Rt. 9P
Lee Bombard, 1382 Rt. 9P
Coleman Vicary, 1379 Rt. 9P
Rochelle Rich, 1378 Rt. 9P

After listening to the complaints, Zoning Officer Gil Albert reiterated this is about a height variance and the Applicant is doing everything he can to help alleviate many of the voiced complaints.

Barbara Faraone stated this is about height variance tonight and this is about a misunderstanding about the height.

Chairman Stephen Bodnar asked if there were any more questions; finding none, **Chairman Stephen Bodnar closed the Public Hearing at 9:58 p.m.**

William Moreau made a motion, seconded by Barbara Faraone to table this application and investigate the cost of reconfiguring the roof to bring it to compliance of 30' instead of the 31' 3", which is below the 35' the Applicant was told was maximum height in August 25, 2008. Chairman Stephen Bodnar-aye, James Burke- aye, Barbara Faraone-aye, Thomas Carrangi-aye, Clifford Hanehan-aye, William Moreau-aye, Clarence Fosdick-aye. **Carried 7 -0 Tabled**

**Dennis J. Brida # 09-06
2160 Rowley Rd.
Ballston Spa, NY 12020
S/B/L 156-1-10 Rural Residential**

**Location: 1023 Rt. 29
Schuylerville, NY 12871**

Applicant is seeking a height variance and sign area variance along with a front setback variance in order to install the sign for the new Mango 29 Deli, located at 1023 Rt. 29.

The Applicant appeared before the Board stating he and his wife are the owners of Mango 29 Deli and he needs a variance to put his sign in the center of the median on his property. It is 8' x 6.5' x 4'. He had a meeting with Zoning Officer Gil Albert, Town Engineer Ken Martin, DOT and his civil engineer from Thompson & Fleming to address ingress/egress and in the process of that meeting he discussed moving the sign to the center of the median. DOT and Town Engineer Ken Martin like the idea of moving it there. It does not impact visibility and is more centered in front of the deli. Clifford Hanehan stated the sign is 2' too big.

Zoning Officer Gil Albert stated the poles for the sign are considered part of the square footage for the sign, so when you add in the poles and the stone posts it puts it over regulations.

Requirements also state it is to be 10' off the property line, so he needs a variance for that too.

The Applicant said he will have a 75' island and would like the sign in the center of that. DOT said he needs ingress/egress of 32' x 30' in/out on each side of the island, visibility is fine with the sign in the center there and they said they feel the sign will be better if moved to the island instead of old location.

Chairman Stephen Bodnar asked if there were any other Board questions. There were none.

After providing Proof of Notice in the Saratogian on June 12, 2009, Chairman Stephen Bodnar opened the Public Hearing at 10:13 p.m.

Chairman Stephen Bodnar asked if there were any more questions; finding none, **Chairman Stephen Bodnar closed the Public Hearing at 10:14 p.m.**

Chairman Stephen Bodnar made a motion, seconded by Barbara Faraone to approve the variance for the sign because it will be basically conforming and will not be out of place.

Chairman Stephen Bodnar-aye, James Burke- aye, Barbara Faraone-aye, Thomas Carringi-aye, Clifford Hanehan-aye, William Moreau-aye, Clarence Fosdick-aye.

Carried 7 -0

Approved

Old Business: None

New Business: None

Barbara Faraone made a motion, seconded by Chairman Stephen Bodnar, to adjourn the meeting at 10:30 p.m. Chairman Stephen Bodnar-aye, James Burke- aye, Barbara Faraone-aye, Thomas Carringi-aye, Clifford Hanehan-aye, William Moreau-aye, Clarence Fosdick-aye. **Carried 7- 0**

Adjourned

Respectfully submitted,
Linda McCabe
ZBA Clerk