

**TOWN OF SARATOGA
ZONING BOARD OF APPEALS DRAFT MINUTES
March 26, 2012**

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 – absent, Barbara Faraone – absent, Clarence Fosdick – present, G. William Moreau – absent, James Burke – present, Alternate John Deyoe – present.

Due to the absence of Board Members Barbara Faraone, G. William Moreau and Thomas Carrangi, Chairman Stephen Bodnar elevated Alternate John Deyoe to full voting status.

Also present: Town Zoning Officer Gil Albert, Town Attorney William Reynolds, Andrew Sheeran, Michele McClure, Walter & Lisa Taras and Gail Taras. (Sign-in sheet is on file in the Clerk's office)

Approval of Minutes: **A motion was made by Clarence Fosdick and seconded by John Deyoe, to accept the minutes of the January 23, 2011 meeting.** Chairman Stephen Bodnar – aye, Clifford Hanehan -aye, James Burke – aye, Barbara Faraone – absent, Thomas Carrangi - absent, William Moreau – absent, Clarence Fosdick - aye, John Deyoe – aye. **Carried 5 – 0**

Approved

Order of Business:

Area Variance

**Walter Taras #12-02
182 Co. Rd. 69
Schuylerville, NY 12871
S/B/L 182.-2-29 Rural**

The Applicant is seeking a special use permit for a sand mining operation through the Planning Board and they have denied the application because he needs a variance for his newly located haul road. The Planning Board is awaiting a letter from NYS DEC approving location of said road; though they have received a letter approving the conceptual context of the road to date. The Board has sent the Applicant with a positive recommendation for an area variance. The Applicant seeks a side setback variance of 71' to use the newly located haul road for his proposed mining operation. The road is located on the east side of the pond, between the pond and his house, and crosses the property line of the owner's residential parcel. This is located at 182 Co. Rd. 69.

The Applicant appeared before the Board and explained the Town Planning Board denied him the new location of the haul road because he needs an area variance for its location. He said they've been using this road for years and DEC is now allowing them to use the road which crosses the pond, for the approval of their mining project. The Applicant then handed Chairman Stephen Bodnar a letter from Ted Serbalik of Saratoga County Public Works. The letter stated based upon Mr. Serbalik's conversations with Town Planning Board Chairman Ian Murray and Town Zoning Officer Gil Albert that the pre-existing driveway located east of the pond is the preferred location for the proposed haul road. Therefore the public works department has no objection to that location

for the haul road providing that DEC guidelines are followed and the haul road connection to the County highway is stabilized and maintained in a safe manner.

A lengthy discussion between the Board and the Applicant ensued. Zoning Officer Gil Albert stated he would like the road moved off the residential lot and onto the mining parcel; if anything were to happen in the future where the Applicant would need to subdivide, the road being on the residential parcel would be a real problem. Town Attorney William Reynolds asked if the Applicant agrees with the necessity that the road should be off of that parcel. The Applicant did not agree and would like it to stay where it is for the life of the mine, unless he sells the house, then he would move it. He stated he would like it noted in the minutes of the meeting that if he does move, he will move the road onto the mine lot.

Chairman Stephen Bodnar questioned the life of the mine and the Applicant responded 3 – 5 years. Town Attorney William Reynolds stated he doesn't believe it is legal to grant a variance to commit this road to encroach on other properties of the Applicant. They are separate lots and it is an adjacent lot; this road, being part of the mining operation, must be 75' away from any adjacent property lines according to Town zoning regulations. Despite the fact it is owned by the Applicant, it is still a property line. The responsibility of this Board is to protect lots of land in the town, no matter who owns it, not only for the present time but also for the future. His opinion is the Board cannot grant the variance when it encroaches on the residential lot and allowing a commercial use on a residential lot is considered a mixed use and that is not allowable. The road must be moved. Chairman Stephen Bodnar stated he went out there and he sees no reason the road can't be moved 20' from that residential line.

The Applicant said he has no problem with that, but Ted Serbalik of the County said he'd allow the road entrance onto Co. Rd. 69 to be used and he's to move the road over to meet it.

Town Attorney William Reynolds and Zoning Officer Gil Albert both felt Ted Serbalik would have no problem with moving the entranceway as long as it wouldn't be in the wetlands.

Clarence Fosdick stated he sees nothing preventing the Applicant from going 20' away from residential property line and straight up to meet the curve/radius and then out to the mine.

Chairman Stephen Bodnar questioned how far from the pond must he stay and the Applicant responded he doesn't have to stay away from the pond because he crosses over it.

Clifford Hanehan stated if the Applicant doesn't want to go back to the County he'll have to go off of the residential parcel and up the property line.

Clarence Fosdick questioned why the Applicant just doesn't bend the road once crossing the pond and go straight down to Co. Rd 69 from there, which is further away from the residential property line. Zoning Officer Gil Albert responded the Applicant would have to go back to DEC if he did that due to buffer zones.

Town Attorney William Reynolds stated the map doesn't delineate the wetlands and he asked the Applicant if he has a wetland delineation map. The Applicant responded DEC has it.

Chairman Stephen Bodnar stated the Board does not wish to overstep NYS DEC with any wetland issue.

Town Attorney William Reynolds then questioned what the topography and hydration is between the road as it exists and the pond. Zoning Officer Gil Albert responded it's very flat there and well drained.

Chairman Stephen Bodnar asked if there were any further Board questions; there were none.

Chairman Stephen Bodnar then asked Zoning Officer Gil Albert for his opinion.

Zoning Officer Gil Albert stated if the Applicant moves the road over, he is for it; but you have to decide if it's to be 20', 15', 12'; a definitive setback is needed.

Chairman Stephen Bodnar then asked for the Town Attorney's opinion.

Town Attorney William Reynolds stated there's an issue with wetlands; the Board doesn't have the wetland information to know if any part of this road encroaches onto the wetlands and he thinks the Board needs to seriously consider that.

Chairman Stephen Bodnar then read a letter from Planning Board Chairman Ian Murray stating the Planning Board has sent the Applicant to the ZBA with a positive recommendation for approval for an area variance for the new location of the haul road.

Chairman Stephen Bodnar stated the Board has not heard from the Saratoga County Planning Board concerning any opinion with this project.

After providing Proof of Notice in the Saratogian on March 16, 2012, Chairman Stephen Bodnar opened the Public Hearing at 7:43 p.m. asking those wishing to speak concerning this application to please stand and state their name and address:

Michele McClure, 178 Co. Rd. 69 stated she is not happy with the mine being 75' from her property line, but she has no objection with the Applicant using the road on the east side of the pond, though she believes it is in the wetlands buffer zone, and in the eleven yrs. she has lived there she has never seen any flags delineating the wetlands.

Andrew Sheeran, 178 Co. Rd. 69 stated he agrees with Town Attorney William Reynolds and as long as the Applicant meets all the criteria of the Zoning Board, he has no objection with the road being moved to the east side of the pond.

Town Attorney William Reynolds made a suggestion that if it is the Board's inclination to approve the variance by however many feet the Board decides, the Board should put a condition in there that the road does not encroach on DEC delineated wetlands and if it does the road cannot succeed there. Chairman Stephen Bodnar stated they can definitely do that in their determination.

Chairman Stephen Bodnar asked the Board if there were any other questions; finding none
Chairman Stephen Bodnar closed the Public Hearing at 7:57 p.m.

Chairman Stephen Bodnar then read the Summary of Area Criteria Balancing Test and went through it line by line with the Board. The Board found in favor of the Applicant.

A motion was made by Clifford Hanehan and seconded by Clarence Fosdick, to grant an area variance of 65' for the haul road. The haul road will be repositioned with a side setback of 10' west of the residential lot line and run parallel with the residential lot line until it meets the curve/radius of the existing haul road on the condition it does not encroach on any DEC delineated wetlands. Chairman Stephen Bodnar – aye, Clifford Hanehan -aye, James Burke – aye, Barbara Faraone – absent, Thomas Carrangi - absent, William Moreau – absent, Clarence Fosdick - aye, John Deyoe – aye. **Carried 5 – 0**

Approved

*Chairman Stephen Bodnar wanted it noted that the neighbors have no objections with this variance.

Old Business: Chairman Stephen Bodnar asked the Board members to get their recommended zoning amendments to Zoning Officer Gil Albert before the next meeting.

New Business: Chairman Stephen Bodnar stated he received a letter from Board Member Barbara Faraone today stating due to health issues she must resign from the Board. She will be sincerely missed by this Board.

Chairman Stephen Bodnar made a motion, seconded by Clarence Fosdick, to adjourn the meeting at 8:18 p.m. Chairman Stephen Bodnar – aye, Clifford Hanehan - aye, James Burke – aye, Barbara Faraone – absent, Thomas Carrangi - absent, William Moreau - absent, Clarence Fosdick - aye, John Deyoe – aye. **Carried 5 – 0**

Adjourned

The next Zoning Board of Appeals meeting will be held April 23, 2012.

Respectfully submitted,

Linda McCabe
ZBA Clerk