

**TOWN OF SARATOGA
ZONING BOARD OF APPEALS DRAFT MINUTES
August 11, 2021**

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

Chairman William Moreau welcomed everyone to the meeting and proceeded to review the *Rules of the Board*.

Zoning Clerk Linda McCabe called the roll: Chairman William Moreau – present, Clifford Hanehan – present, Thomas Carrangi – present, Steve Mehan - absent, Mark Sullivan – absent, Christopher Benn – present, Mark Solan – present, Alternate Rick Burke - present.

Due to the absence of Steve Mehan, Alternate Rick Burke was elevated to full voting member.

Also present: Sherry Van Horn, Council Jacquelyn Poulos-White, Marilyn Albright and Steve Sullivan. (Sign-in sheet is on file in the Clerk’s office.)

Approval of Minutes: **A motion was made by Christopher Benn, seconded by Thomas Carrangi, to accept the meeting minutes of July 26, 2021 as written.** Chairman William Moreau – aye, Clifford Hanehan - aye, Christopher Benn - aye, Steve Mehan - absent, Mark Sullivan – absent, Thomas Carrangi - aye, Mark Solan – aye, Rick Burke - aye.

Carried 6 - 0

Approved

Balancing Test for the Van Horn Application

Sherry Van Horn

573 Rt. 9P

Stillwater, NY 12170

S/BL 206.6-2-16 Lake Residential

Location: 1191 Rt. 9P

Returning Applicant seeks reapproval for the third time for the identical variances granted August 26, 2019: 6,000 sq. ft area variance, 26’ front set back and 1.5’ back set back variances to remove existing structure and future construction of a new home. The public hearing last month was for the sole purpose of allowing Mr. Vale, neighbors and the public, to personally speak to the Board concerning the geotechnical engineering report that was previously presented, as Judge Walsh determined Mr. Vale (in the matter of Vale v. Town of Saratoga) was not given enough time to review and/or rebut said report prior to the Board rendering their decision.

Applicant Sherry Van Horn, owner of 1191 Rt. 9P, appeared before the Board.

Chairman William Moreau thanked everyone for coming and stated this special meeting is to wrap up, after having digested all the information from 2019 through the July 26, 2021 meeting, the application of Sherry Van Horn. To recap, the Board heard from the public regarding the geo-tech engineering report, Mr. Vale, Board’s Council and the Applicant. Mr. Vale had just a couple of comments that he made, he had no professional representation rebutting the report, but shared only his opinions. Last month, the Board left off prior to completing the Balancing Test, so they will now go forward with it.

1. *Whether benefit can be achieved by other means feasible to applicant* – Christopher Benn said no, it's a pre-existing, non-conforming lot. Chairman William Moreau agreed and noted she's tightening up on the sides, making it better. Christopher Benn agreed it will be better. Clifford Hanehan added he is in agreement with both Chris and the Chairman. All Board members agreed.

2. *Undesirable change in neighborhood character or detriment to nearby properties* – Chairman William Moreau stated absolutely not, there are other houses on that side of Rt. 9P. Christopher Benn agreed and Clifford Hanehan stated currently it's an eyesore, a dilapidated building and her proposal will make it beautiful; Mark Solan, Rick Burke and Thomas Carrangi agreed.

3. *Whether request is substantial* – Clifford Hanehan stated no, it is not substantial and there's a grandfather clause which is helping to guide the Board with this as well. It allows the applicant, and/or whoever she decides to sell it to, to rebuild on the footprint, but she proposes to pull it away from the road making it a more functional lot; she's making it a better, more improved property. Christopher Benn agreed with that assessment, as did the Board. She's taking the foundation and house that's in disrepair and doing the work that's needed to make it a viable, safe property. Chairman William Moreau, Rick Burke, Mark Solan and Thomas Carrangi agreed.

4. *Whether request will have adverse physical or environmental effects* – Thomas Carrangi said no, Chairman William Moreau and Clifford Hanehan agreed. Clifford Hanehan stated there will only be positive effects, not less. Christopher Benn added the geo-tech report stated they can stabilize the cliff wall which is a positive effect, as it will prevent that from falling into the lake. The Board members all agreed.

5. *Whether alleged difficulty is self-created, relevant but not determinative* – Clifford Hanehan said no, the property owners, which have owned the property for some time now, have the right under Town, County and State law, to do something with their property, so this is not a self-created difficulty. Chairman William Moreau added the Applicant's trying to make improvements to the property, the footprint will be consolidated and he believes she's trying to make it better; the entire Board agreed.

Clifford Hanehan noted after going through the five balancing test questions, he believes there is no detriment to the public, in fact, there's a clear benefit to allowing this variance to be granted.

Chairman William Moreau stated he agrees there clearly is no detriment to health and safety of any properties. A dilapidated, unsafe structure will come down and a new, improved structure will bring it closer to current zoning codes as it will be reducing the footprint, far exceeding what is there now.

Mark Solan added it will bring it closer to proper site specifics than is currently there now.

Christopher Benn noted it lessens the lot coverage by 80% to what is currently there.

Clifford Hanehan noted there's been some pretty extensive research and operations that have gone on, such as the \$20,000.00 geological testing and \$50,000.00 worth of fabric, riprap and shore stabilization. The Applicant's demonstrated she's willing to do whatever she needs to do NOT to leave a mess, NOT to affect the environment, NOT to create a hazard.

Chairman William Moreau added he agrees with that. The Applicant has exercised in good faith that she will take the steps to make the property better. Chairman William Moreau then asked if there were any further questions; there were none.

A motion was made by Mark Solan, seconded by Rick Burke, to adopt the following Resolution approving the three variances for 1191 Route 9P as presented:

WHEREAS, Sherry Van Horn, hereinafter referred to as “Applicant,” seeks the reconsideration of an application for three area variances for property at 1191 Route 9P in the Town of Saratoga (the “Property”) originally dated August 8, 2019, and

WHEREAS, the Applicant was granted the area variances by decision of the Town of Saratoga Zoning Board of Appeals (hereinafter the “Board”) on August 26, 2019, and

WHEREAS, the granting of the variances was the subject of litigation which resulted in the variances being vacated and the matter remanded to the Board by decision of Hon. Thomas D. Nolan, JSC, dated February 11, 2020, for further proceedings consistent with the Court’s decision, and

WHEREAS, after being remanded in 2020, Applicant sought reconsideration of the variances by this Board, the Board again reviewed the application at its meetings of July 27, 2020 and August 24, 2020 before approving the variances on August 24, 2020, and

WHEREAS, the granting of the variances on August 24, 2020 was again the subject of litigation which resulted in the matter being remanded to the Board by decision of Hon. James E. Walsh, dated July 7, 2021, for further proceedings consistent with the Court’s decision and specifically to allow Petitioner in the litigation, Richard Vale, the “opportunity to challenge or rebut the geotechnical report” that had been submitted by Applicant during the 2020 review of the variances, and

WHEREAS, notice that this matter would be reconsidered and subject to a Public Hearing on July 26, 2021 was provided to Richard Vale, in addition to being provided to neighboring property owners and published in the Town’s Official newspaper, and

WHEREAS, a Public Hearing was again held on this matter on July 26, 2021, at which Applicant, Mr. Vale and members of the public provided comments to the Board, and

WHEREAS, members of the Board have previously viewed the Property, and

WHEREAS, members of the Board have been provided with and reviewed the entire prior written record of this application from both the 2019 and 2020 reviews, and

WHEREAS, the Board has received and considered both the prior and current verbal and written comments and presentations provided to the Board by the Applicant and her representatives; Richard Vale and his representatives; and members of the public, and

WHEREAS, the Board has deliberated this matter during the 2019, 2020 and now 2021 review of this application and each time has specifically considered the Area Variance “Balancing Test” and the five criteria related to that test, now, therefore, be it

RESOLVED, that the application of Sherry Van Horn, for three area variances, to the same extent as previously approved by the Board, are hereby confirmed and approved as the benefit to the Applicant in granting the application outweighs any detriment to the health, safety and welfare of the neighborhood or community for the following reasons:

1. Granting the variances will not create an undesirable change in the character of the neighborhood and it will not be a detriment to nearby properties as the predominant use of property in this neighborhood is residential with many homes similarly in close proximity to Route 9P and Saratoga Lake, including homes along similar inclines to the Lake. There has also been a residence on this Property for several decades. The granting of the variances will result in an improvement for the neighborhood as the

new residence will be built in a safer location as it will be further from Saratoga Lake and further from Route 9P.

2. The Applicant has demonstrated that this benefit cannot be achieved by other means feasible to the Applicant. Strict application of the Town Code area requirements for this pre-existing lot would deprive the Applicant of any viable plan for construction of a residence as the front and rear yard setbacks overlap leaving no buildable envelope and the pre-existing non-conforming lot is smaller in size than permissible under the current Code. The variances are the minimum relief necessary. They will allow for a safer and more code compliant residence to be built.
3. The requested relief is not substantial. To any extent that it may be considered substantial, the substantiality is mitigated by the fact that the Property will be much closer to Code compliance than it currently is, the project will be an improvement to the neighborhood and the residence will be in a much safer location.
4. The present structure is in serious disrepair, and its replacement in a safer location, that is much closer to code compliance, together with the related re-engineering of the bank along Saratoga Lake, will have a positive effect on the physical and environmental conditions in the neighborhood.
5. Applicant's need for the area variances is not self-created but is rather due to the difficult natural character and dimensions of the lot.

The above Resolution was approved by the following vote:

Chairman William Moreau – aye, Clifford Hanehan - aye, Christopher Benn - aye, Steve Mehan - absent, Mark Sullivan – absent, Thomas Carrangi - aye, Mark Solan – aye, Rick Burke - aye.

Granted 6 – 0

Chairman William Moreau thanked everyone for attending.

Applicant Sherry Van Horn thanked the Board.

Old Business: None

New Business: None

A motion was made by Christopher Benn, seconded by Mark Solan, to adjourn the meeting at 7:16 p.m. Chairman William Moreau – aye, Clifford Hanehan - aye, Thomas Carrangi - aye, Christopher Benn - aye, Steve Mehan - absent, Mark Sullivan – absent, Mark Solan – aye, Rick Burke - aye.

Carried 6 - 0

Meeting Adjourned

The next regular Zoning Board of Appeals meeting will be held on September 27, 2021.

Respectfully submitted,

Linda McCabe
ZBA Clerk