TOWN OF SARATOGA ZONING BOARD OF APPEALS DRAFT MINUTES July 26, 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 Carringi – absent, Steve Mehan - present, Mark Sullivan – absent, Christopher Benn – present, Mark Solan – present, Alternate Rick Burke - present.

Due to the absence of Mark Sullivan, Rick Burke was elevated to full voting status.

Also present: Zoning Officer Gil Albert, Ian Murray, Anthony Vaccarielli, Michael Bouchard, Stanley Boyark Jr., Steven Sullivan, Richard Vale, Marilyn Albright, Sherry Van Horn, Mike & Mary Alice Przekop, Jack Manning, Paul Murphy, Kimberly & Donald Coulter, Kelly Kilventon. (Sign-in sheet is on file in the Clerk's office.)

Approval of Minutes: A motion was made by Mark Solan, seconded by Christopher Benn, to accept the meeting minutes of May 24, 2021 and June 28, 2021 as written.

Chairman William Moreau — aye, Clifford Hanehan - aye, Christopher Benn - aye, Steve Mehan - aye, Mark Sullivan — absent, Thomas Carringi - absent, Mark Solan — aye, Rick Burke - aye. **Carried 6 - 0**

Approved

Public Hearings for Area Variance

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. This public hearing is for the sole purpose of allowing the 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 said this is back before the Board to allow Mr. Vale, and the public, opportunity to address the Board concerning the geotechnical report of Sherry VanHorn's Property, located at 1191 Rt. 9P property.

After providing Proof of Notice in the Saratogian on July 16, 2021, Chairman William Moreau opened the Public Hearing at 7:05 p.m. asking those wishing to speak to the geotechnical report, to please stand and state their name and address:

Applicant Sherry Van Horn asked if she could please speak to address some points the petitioner spoke of to the Board at a prior meeting. The Board agreed to hear her, as it was her application before them.

Applicant Sherry Van Horn stated she wished to go on record addressing some of the petitioners' inaccuracies and misinformation as follows:

- Existing home and garage totals 1114 sq. ft., not 718. With existing porches, there is a total of 1800 sq. ft. The variance proposal asks for a 2400 sq. ft. footprint (house with 2-car garage). This does not equate to a 315% increase in sq. ft. as petitioner suggests.
- > "There are 4 parcels to the north that are vacant." This stretch of land is a 150' stretch containing a large deck and trees for the use of petitioner's hotel residents.
- Petitioner states the proposed structure is not consistent with existing character of the neighborhood. There are 11 homes on the cliff and most are the same size or larger than that being requested for this parcel.
- "Neighbors oppose" Two (2) neighbors objected at the original Board meeting. Thirteen (13) neighbors signed a petition supporting the variance and cliff stabilization. One (1) neighbor wrote a supporting letter. Another letter was written by a good friend of her late husband, although biased, he knew her husband's plans and skill at building cliffside homes, and his many contributions to Saratoga Lake and communities.
- ➤ Petition alleges she is seeking variances for money. *On May 13, 2020, she reduced the asking price by \$20,000.00.*
- ➤ Petitioner scoffed at the stones placed on the bank to prevent further water level erosion. This was \$50,000.00 worth of filter fabric and boulders ensuring prevention of further erosion. The Board has copies of the NYS DEC permit and subsequent inspection in packets from previous Board meetings.
- The existing building is sinking due to water drainage.' The geotechnical engineering report describes the viability of the building and effective methods to manage ongoing drainage. This is a pre-existing, nonconforming structure. ANY home built on this property will require a variance due to current guidelines. The variances being sought consolidates the existing buildings and moves the entire home further away from adjoining property boundaries, as well as Rt. 9P and remains below all height restrictions. This, plus the additional stabilization of the cliff, clearly offers significant benefit to the neighbors, neighborhood and community.

Applicant Sherry Van Horn asked again for approval and thanked the Board for listening.

Mr. Vale, 1192 Rt. 9P, stated he read the geotechnical engineering report by Gifford Engineering and said it states there's no obvious access to the shore. He said he called and talked to Greg Gifford yesterday and told him there are stairs to the beach, but the most important aspect is the rock face. There's so much vegetation now you can't even see it. He thinks it has slipped down 2' - 3' and the only thing keeping the house in place are the I-beams. He then stated those were the only comments he had on the report. He thanked the Board for listening.

Steve Sullivan, 573 Rt. 9P, spoke in great support of the Board granting the variances, but spoke of things other than the geotechnical report.

Kelly Kilventon, 71 Hiller Lane, stated she lives across the street and has for nearly 50 years. She spoke of other concerns than the geotechnical report and asked the Board to please grant the requested variances as she sincerely supports this request.

Kim Coulter, 83 Rodgers Lane, asked the Board to please approve the variances as it will greatly improve the neighborhood. She added she hugely supports the applicant's request.

Paul Murphy, 36 Hill Rd., asked to read a letter from Jan Wysocki, another neighbor, aloud to the Board.

Chairman William Moreau responded he received that letter earlier in the day, Board members have copies of it and it is a copy of the letter she sent to the Board in August 2019; the letter is dated August 26, 2019. As it is already on record, was read aloud at a previous meeting and does not pertain to the geotechnical report, he did not allow it to be read again.

Chairman William Moreau asked if anyone further wished to speak; seeing none, Chairman William Moreau close the Public Hearing at 7:21 p.m.

Attorney Jacquelyn Poulos White of Miller, Mannix, Schachner & Hafner Law Firm, noted her law firm became representatives for the Town on the second round of the Article 78 lawsuit by the petitioner, Mr. Richard Vale. She reviewed how and why the application was back before the Board, adding that the Court found no fault with the Board's balancing test and findings, but as the geotechnical report was discussed in the approval of the variances, the Court remanded it back before this Board to allow Mr. Vale the opportunity to challenge or rebut the geotechnical report. Notice to Mr. Vale and proper neighbor notices were given (more than the court ordered), a lot of public input has been given since the beginning of the application in 2019, along with tonight's input. This Board is to consider all application materials and public comments from the 2019, 2020 and 2021 reviews of the application. In response to a question from the Building Inspector, Attorney White said the Board is not to being asked to review the geotechnical report in the manner the Building Inspector would, but where such a report is provided as part of an application, the Board should consider it and any public comments regarding it to the extent that the report and comments speak to the area variance balancing test.

Chairman William Moreau stated he would like 30 days to review all the facts prior to voting, as the Board needs time to digest and consider all the information.

Clifford Hanehan said this has been in front of them since 2019 and he'd like to get it right; he thinks they did the first and second time, so he feels they need to make this bullet proof.

The Board agreed.

Applicant Sherry VanHorn stated she's waited two years, has lost one potential buyer due to this lawsuit and would appreciate an answer sooner than a month. She asked if they can please consider it sooner.

Clifford Hanehan suggested they hold a special meeting a bit sooner if possible.

Chairman William Moreau asked the Board to review the file and give consideration to Mr. Vale's comments, along with the information on file and comments of the previous public hearings. He believes they need a couple of weeks to digest and consider everything before going through the balancing test and rendering a decision, and asked Board members for their thoughts. The Board agreed and felt they could hold a special meeting a bit sooner than 30 days. After they reviewed their calendars, it was decided they would hold a special meeting on August 11, 2021, at 7 p.m. to go through the balancing test and render a decision.

Applicant Sherry VanHorn thanked the Board.

Michael Bouchard/Anthony Vaccarielli #21-06 Schuyler LLC P.O. Box 617 Saratoga Springs, NY 12866 S/B/L 155.-1-31 Rural Residential

Location: 873 Rt. 29

Returning Applicants seek a 1.35 acres area variance, 35' front setback and 49' back setback variances in order to open a car dealership, to be located at 873 Rt. 29. This property is a .65 of an acre parcel, located in front of Schuyler Park. This Applicant was before the Planning Board in March 2021.

Owner: Mildred Allen

179 Pyramid Pines Est.

Saratoga Springs, NY 12866

Applicant Mr. Bouchard (595 New Louden Rd., Latham, NY), appeared before the Board, stated that Schuyler LLC has a contract to purchase the .65 of an acre lot form Mildred Allen, contingent upon Mr. Vaccarielli obtaining a permit to open a car dealership and referred to Town of Saratoga Zoning Code §400-35, Uses Requiring Special Permit, Automobile sales and/or services. (That code states minimum lot area for such is 2 acres, 250' lot width, 250' of frontage, 75' front setback, 150' total two sides setback, 50' one side setback, 75' rear setback and 10% maximum lot coverage of buildings.) He stated they are seeking a 1.35 acres area variance, a 25' front setback variance and a 49' back setback variance and there are businesses on that road such as Hearthstone Veterinary, Farmer's Daughter Ice Cream and others. He said John Hayes, realtor for Mildred Allen, wrote a letter dated 6/1/2021 indicating her property has been on the market nearly a year and without these variances being granted, it creates a hardship for her, as there's been no other interest in her property. He then handed out copies of said letter to the Board members.

Chairman William Moreau asked if there were any Board questions; there were none. Chairman William Moreau asked for the opinion of Zoning Officer/Building Inspector Gil Albert.

Zoning Officer/Building Inspector Gil Albert responded they are seeking excessive variances. It's only a .65 of an acre lot and the allowable minimum lot size is 2 acres for that type of business. He questioned how they'll take care of cars as you need bays to work in. Much more information is needed. This is not in keeping with the surrounding area, a special use permit requires certain things for businesses and this requires a special use permit. He said it is too excessive and is against it.

Mr. Bouchard responded the building will be small.

Zoning Officer/Building Inspector Gil Albert said this is the Rt. 29 corridor and this business isn't keeping with what the Town is trying to do there. We want to keep the rural look for all businesses there with screening so you can't see parking lots, cars, etcetera from the road. You can't do that with this type of business. We've been working on this for 5+ years and this is not what our Town wants.

Mr. Vaccarielli stepped up to the podium and demanded who's we, we, we?

Zoning Officer/Building Inspector Gil Albert responded the Town.

Mr. Vaccarielli stated the footprint can be increased/decreased and they're in line to do what's needed.

Zoning Officer/Building Inspector Gil Albert responded the Town is still working on this and this proposal isn't what they want there. The Town Board, Planning Board and Zoning Board of Appeals want all new businesses on that corridor to have a buffer as we don't want to see cars, parking lots, etcetera along that road. It's what the Town wants and what you propose is against what we've been working on.

Chairman William Moreau stated he asked for the opinion of the Zoning Officer, wanted to hear his opinion and respects his opinion. The Applicants are not to debate him on his opinion.

Mr. Vaccarielli stated it's a grandfathered lot.

Zoning Officer/Building Inspector Gil Albert responded no it is not. Once a building is torn down on a non-conforming lot, it is no longer grandfathered. We are not liking this for our Town. This is a farming community and we want buffers and that cannot be accomplished on that lot.

Steve Mehan stated all car lots he's seen have bright lights which is a concern as there are residences right next door to this lot.

Mr. Bouchard stated they spoke with two neighbors, it's a 55 mile per hour road, turning issues due to traffic - you lower the speed limit and the lighting can be solved as well.

Chairman William Moreau noted that the Applicants previously appeared before the Planning Board and the Planning Board Chairman said they couldn't support this proposal. He then proceeded to read a portion of those minutes to the Board: 'Michael Bouchard and realtor Anthony Vaccarielli appeared before the Board seeking information and guidance to open a car dealership, to be located at 873 Rt. 29. Anthony Vaccarielli added he'd like to construct an office and service garage there as well.

Chairman Ian Murray explained the property was the old Millie Allen's property and is a 0.65+/- acre lot. He has serious concerns with this as it does not meet Town regulations and well and septic distances would need to be met.

Mr. Bouchard said they meet those distances and the Board can allow them to do this.

Chairman Ian Murray reiterated the property doesn't meet zoning regulations and the Board cannot allow this.

Mr. Bouchard replied they can get a variance from the ZBA; they'll hire an engineer and make it work.

Chairman Ian Murray stated they need a 125% variance.

Mr. Bouchard responded it's grandfathered in so it'll work. Mr. Bouchard and Mr. Vaccareilli began arguing and pushing their agenda to the Board.

Chairman Ian Murray explained it is not grandfathered in but if they want to continue to argue and they want to pay the money then they can go ahead, it's their choice. He is saying it does not work.

They continued to argue and Chairman Ian Murray asked if anyone on the Board had anything to add. Christopher Koval stated that is a dangerous area of Rt. 29 for something like this and they don't meet regulations with the non-conforming lot.

Building Inspector/Zoning Officer Gil Albert added they need a minimum of 2 acres for that and they're asking too high of a variance. It's highly unlikely the variance would be granted. Chairman Ian Murray thanked them for coming in.'

Chairman William Moreau then stated this application was sent to the Saratoga County Planning Board and he proceeded to read their findings: "RE: SCPB Referral Review #21-81-Three area variances sought (min. lot size, front-yard, and rear-yard setbacks)-Bouchard Proposed is use of an existing (substandard) 0.65-acre parcel (vs. the 2-acre minimum lot size required in town's Rural Residential District) for establishment of a used car dealership and car service business. The proposed site plan requires two dimensional setbacks: front yard setback variance (50ft provided/75 ft. required) and rear yard setback (26 ft. provided/75 ft. required). Location: NYS Route 29 155.-1-31; vacant land in Cons. Ag. Dist 1 Rural Residential Zoning District Received from the Town of Saratoga Zoning Board of Appeals on June 14, 2021. Reviewed by the Saratoga County Planning Board on July 15, 2021. Decision: Disapprove Comment: A substantial number (3) of variances are required to bring the property and project design/site plan into conformity with current zoning standards for the Rural Residential Zoning District. The Saratoga County Planning Board, following presentation of the application by staff, concurred that the proposed use for the site will create an undesirable change in neighborhood character and that of nearby properties. It was noted that according to the Town of Saratoga Zoning Ordinance the purpose of this District is to accommodate low density residential growth and development. The property on which the development is proposed is currently vacant rural land located within Saratoga County Consolidated Agricultural District #1 and which until recently was used for the placement of residential housing. Beside the fact that the requested variances are substantial in size and number, it is the intent of the town and this District to not compromise existing agricultural uses and constrained areas. Permitted uses in the District are: single-family detached residential housing, 2-family residential homes, and all permitted uses listed in the Rural District (Ag, SF det., 2-Fam, customary accessory uses, roadside stands and home occupation uses). - 2 -As part of the review process, if one or more of the appeals were to be granted by the town Zoning Board of Appeals, the applicant would need to obtain a Special Use Permit from the town Planning Board, as required, because of the uses proposed (automobile sales and service). At its meeting, there were concerns and questions voiced by the SCPB which go directly to the issues to be reviewed and discussed for a Special Use Permit and for Site Plan Review. The area variances being sought have a direct causal relationship to the design features of those latter stages of review. Both the appeals now before the ZBA and any future plan before the Planning Board, will have to consider the appropriateness of the proposed use in this location, and with such dimensional constraints to overcome, as well as having to answer questions that may arise from the plan features, such as:

- Will the site become an eyesore to the District and neighborhood, with the potential to turn into an automobile junkyard?
- Recognition that approval is sought for the proposed uses on a parcel that is 1/3 that of the required lot size
- The application proposes used-car display & sales as well as an automobile service business with an office and a service garage in a District of residential and agricultural pursuits
- The uses may result in undesired noises of such business in a rural residential neighborhood
- That what is proposed is not the proper or desired appearance as defined in the District's Purpose need for protection of adjacent or neighboring properties against unsightliness, objectionable features
- Asking for variances on required lot size and dimensional setbacks which connote the plan seeks to cram everything desired onto a decreased amount of usable space:

*placement of an office building

- *space for outside storage of serviced vehicles
- *need room to meet parking requirement of an office and a service business and still display vehicles for sale
 - *need room for a septic system and water well with complying separation distance
 - *need for space on the site plan for enclosed trash dumpsters and recycling container
 - *notation on the plan that outdoor storage is not to be allowed
 - *the site needs to provide sufficient space for snow storage
 - *need space for a designed stormwater management area
 - *the required number of parking spaces is to be determined by the planning board during their review for SUP.

In conclusion, the proposed development of this substandard lot is directly adjacent to a highly travelled state road with relatively high usage and it also abuts a multi-municipal recreational park of increasing usage. The Board cited the safety of turn movements to and from the site (particularly with two points of access proposed) and the appearance and mix of the proposed uses with the community recreational fields as points of discussion by the local board in its review of the application presented.

Sincerely,

Michael Valentine, Senior Planner Authorized Agent for Saratoga Count

After providing Proof of Notice in the Saratogian on July 16, 2021, Chairman William Moreau opened the Public Hearing at 7: 51 p.m. asking those wishing to speak, to please stand and state their name and address:

Ian Murray, 188 Swamp Rd., said some applications can be massaged and fit into the box, this can't be stomped down into a box. It doesn't support it. The Town of Northumberland and the Town of Saratoga put a lot of sweat equity into developing Schuyler Park and this would not fit there. He stated the Town tried to get the state to lower the speed limit in that area of Rt. 29 for the park and the state refused. Variances go with the land and granting this could potentially cause issues in future. He asked the Board to please deny this application.

Chairman William Moreau asked if there was anyone else wishing to speak to the Board; seeing as no one further wished to speak, **Chairman William Moreau closed the Public Hearing at 7:53 p.m.** He then asked if there were any further Board comments or concerns, there were none.

- 1. Whether benefit can be achieved by other means feasible to applicant Clifford Hanehan said you can't change the lot size, so no. Chairman William Moreau agreed and reviewed some of the Saratoga County Planning Board points such as coverage of lot, parking, blacktop, septic and water separation.
- 2. *Undesirable change in neighborhood character or detriment to nearby properties* Christopher Benn said it is not in keeping with the surrounding neighbors. Chairman William Moreau and Board agreed, so yes.
- 3. Whether request is substantial Christopher Benn, Chairman William Moreau, Clifford Hanehan, Mark Solan and Rick Burke said yes, extremely excessive 70% variance to a 0.65 acre lot; Board members agreed.
- 4. Whether request will have adverse physical or environmental effects Steve Mehan, Chairman William Moreau and Christopher Benn said yes, even if they used just gravel for the parking lot, it's an adverse effect.

5. Whether alleged difficulty is self-created, relevant but not determinative – Christopher Benn stated yes, they're trying to make their application fit the lot. Chairman William Moreau said it's an excessive request for such a small lot. The Board agreed.

Chairman William Moreau asked if there were any further questions; there were none.

A motion was made by Clifford Hanehan, seconded by Mark Solan, to deny the requested variances based upon the substandard lot of .65 acre, as our regulations require 2 acres, it is not a grandfathered lot, it is an extremely excessive variance request and does not meet conformation of what the Town is looking for on the corridor of Rt. 29. Chairman William Moreau – aye, Clifford Hanehan - aye, Christopher Benn - aye, Steve Mehan - aye, Mark Sullivan – absent, Thomas Carringi - absent, Mark Solan – aye, Rick Burke - aye. Denied 6 - 0

Stanley Boyark #21-07 1170 Rt. 9P Saratoga Springs, NY 12866 S/B/L 206.6-2-40 Lake Residential

Applicant wishes to demolish existing house and rebuild new home and seeks a 14' back setback variance and a 14' two-sides variance in order to do so.

Applicant Stanley Boyark appeared before the Board and reviewed his application. He said his house is an eyesore and he's been waiting years to take care of it and is now in the position to do so. He went through photos with the Board and explained he wants to build a high efficiency home on the property, which has been in his family for 39-40 years. If the variances are granted the house will be 8' further from the road and remain on the same footprint.

Chairman William Moreau asked if there were any Board questions.

Mark Solan questioned if there were any changes to the septic and was told no, it's in the sewer district.

Chairman William Moreau asked for the opinion of Zoning Officer/Building Inspector Gil Albert.

Zoning Officer/Building Inspector Gil Albert stated it's a good fit with the neighborhood, makes it better and is within the percentage of coverage at only 24%.

Applicant Stanley Boyark added they will also be removing the two huge dying trees there on the property.

Mark Solan questioned the height.

Applicant Stanley Boyark responded it will be two stories and will be within the allowable limit and noted the footprint won't change.

Chairman William Moreau explained that the variances go to the drip line and the Applicant understood.

After providing Proof of Notice in the Saratogian on July 16, 2021, Chairman William Moreau opened the Public Hearing at 8:04 p.m. asking those wishing to speak, to please stand and state their name and address:

Mary Alice Przekop, Spring Water Dr., stated she lives right behind Mr. Boyark and 10 years ago she was before the Board for a variance and was asked if they'd block anyone's views. It should also be asked now as it's in front of her. She stated she is in support of the variances, but doesn't want her view ruined. She then handed photos to the Board and asked them to consider keeping it a one story house.

Steve Mehan stated there are views of the lake on both sides of the roof line. This proposal is for smaller than what is currently there, which improves her view. She can still see the lake as the house won't be wider.

Clifford Hanehan agreed. The two story home won't block her lake views, she'll see more of it. Right now, according to the photos, she sees two very large trees blocking her views. Once they are removed, her views will be much improved. The Applicant is making it better and making her views better at the same time.

Chairman William Moreau asked if there were any further comments or questions? Seeing as no one further wished to speak, **Chairman William Moreau closed the Public Hearing at 8:14 p.m.** He then asked if there were any further Board comments or concern; there were none.

Chairman William Moreau went through the Balancing Test for Area Variance, line by line, with the Board to balance benefit to the Applicant with detriment to health, safety & welfare of the community:

- 1. Whether benefit can be achieved by other means feasible to applicant Clifford Hanehan said no, it's a pre-existing lot, it's being made better, reducing lot coverage and increasing setbacks. The Board agreed.
- 2. Undesirable change in neighborhood character or detriment to nearby properties Clifford Hanehan stated to one, but in totality, everyone's making the old camps into beautiful homes and making it better. Christopher Benn and Chairman William Moreau agreed that it's keeping within the surrounding neighborhood.
- 3. *Whether request is substantial* Mark Solan said this would be making it better. Chairman William Moreau and Clifford Hanehan agreed, as did the Board.
- 4. Whether request will have adverse physical or environmental effects The entire Board said no, in fact, he'll be solving some issues with the removal of the dying trees.
- 5. Whether alleged difficulty is self-created, relevant but not determinative Rick Burke, Mark Solan and Christopher Benn all said no. Chairman William Moreau agreed and added the Applicant will be making the difficulty less as it will be a smaller footprint.

Chairman William Moreau asked if there were any further questions; there were none.

A motion was made by Rick Burke, seconded by Clifford Hanehan, to accept the application as presented and grant the requested variances as he's making a pre-existing lot better by removing the old home and building a two story home which will be under the

height variance of 35'. He has the right to do so and still provides the neighbor with views. Chairman William Moreau – aye, Clifford Hanehan - aye, Christopher Benn - aye, Steve Mehan - aye, Mark Sullivan – absent, Thomas Carringi - absent, Mark Solan – aye, Rick Burke - aye.

Approved 6 - 0

Granted

The Applicant thanked the Board.

Old Business: None

New Business: None

A motion was made by Chairman William Moreau, seconded by Christopher Benn, to adjourn the meeting at 8:24 p.m. Chairman William Moreau – aye, Clifford Hanehan - aye, Thomas Carringi - absent, Christopher Benn - aye, Steve Mehan - aye, Mark Sullivan – absent, Mark Solan – aye, Rick Burke - aye.

Carried 6 - 0 Meeting Adjourned

The Special Zoning Board of Appeals meeting will be held August 11, 2021 and the next regular Zoning Board of Appeals meeting will be held on September 23, 2021.

Respectfully submitted,

Linda McCabe ZBA Clerk