

**TOWN OF SARATOGA
ZONING BOARD OF APPEALS DRAFT MEETING MINUTES
April 25, 2022**

***Meeting Minutes are not verbatim**

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, Christopher Benn – present, Steve Mehan – present, Mark Solan – present, Alternate Rick Burke – absent (arrived at 7:08 p.m.).

Also present: Zoning Officer Gil Albert, Attorney Jacquelyn Poulos White, Stanley Boyark, Paul & Debra Carkner, Alicia & Louis Farone, Shane Drumm, Michael Phillips, Craig Dempsey, Mike Stewart, Stephanie Bitter, Brian White, Jim Vianna, Mike Malone, Dan Cashman, Salvador & Susan DeSiena and Henry & Marie Dufresne. (Sign-in sheet is on file in the Clerk’s office.)

Approval of Minutes: **A motion was made by Christopher Benn, seconded by Mark Solan, to accept the minutes of February 28, 2022 as written.** Chairman William Moreau – aye, Clifford Hanehan - aye, Mark Solan – aye, Christopher Benn - aye, Steve Mehan - aye, Rick Burke – absent (arrived at 7:08 p.m.), Thomas Carrangi – aye.

Carried 6 - 0

Public Hearing

**Michael Malone #22-05
2217 Central Ave.
Schenectady, NY 12304
S/B/L 193.10-1-21 Lake Residential
Location: 1312 Rt. 9P**

Applicant seeks the following variances: a 10’ front setback, a 20’ rear setback, a 13.5’ two sides setback and a 5’ side setback, in order to build a single family residence.

Applicant Mike Malone appeared before the Board and reviewed his application.

Zoning Officer/Building Inspector Gil Albert noted that the 20’ back setback is incorrect. It should be a 5’ back setback variance as it is for an accessory building, the rest of the requested variances are for the house.

Mark Solan questioned the square footage of the original house and was told 500 square feet with no foundation.

Chairman William Moreau asked if there were any further Board questions. Seeing none, he then asked for the opinion of the Zoning Officer.

Zoning Officer/Building Inspector Gil Albert stated it's a small lot, he removed a real eyesore and he's okay with this.

Chairman William Moreau then asked if Counsel had any opinion.

Attorney Jacquelyn Poulos White responded no, though she suggested the Board render no decision until Neighbor Notification receipts are received.

Proof of Notice having been furnished by newspaper on April 15, 2022, Chairman William Moreau opened the Public Hearing at 7:10 p.m., asking those wishing to speak to the Board to please stand, state their name and address:

Sal DiSieno, 1314 Rt. 9P, stated he owns the property next door to this and is concerned with possibly losing his view. He questioned what the height requirement is and was told no higher than 34'. He reiterated that he doesn't want his view blocked.

Michael Phillips, 1316 Rt. 9P, stated he is two properties away and he supports this and hopes the Board approves the application.

Seeing as no one further wished to speak, **Chairman William Moreau closed the Public Hearing at 7:14 p.m.** He then asked if there were any further questions or comments of the Board; there were none.

Chairman William Moreau went through the Balancing Test, line by line, with the Board:

1. *Whether benefit can be achieved by other means feasible to applicant* – Christopher Benn said no, it's preexisting; Chairman William Moreau agreed as did all Board members.
2. *Undesirable change in neighborhood character or detriment to nearby properties* – Clifford Hanehan said this is enhancing the property and making it better for the neighborhood. Chairman William Moreau and Board agreed.
3. *Whether request is substantial* – Thomas Carrangi said no and Chairman William Moreau said no, the lot's so small, it's minor and entire Board agreed.
4. *Whether request will have adverse physical or environmental effects* – Clifford Hanehan said no, he doesn't believe so, Chairman William Moreau doesn't either, each Board member agreed.
5. *Whether alleged difficulty is self-created, relevant but not determinative* – Mark Solan said somewhat, due to the size of the structure. Chris Benn said it's preexisting, which Chairman William Moreau and the Board members agreed with; the lot is what it is and is consistent with the surrounding neighbors.

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

A motion was made by Christopher Benn, seconded by Thomas Carrangi, to accept the application as presented, granting all variances requested with the clarification of the rear setback variance needed being 5' (not 20' as stated on the application) for the accessory building, contingent upon receipt of proof of Neighbor Notifications. Chairman William Moreau – aye, Clifford Hanehan - aye, Mark Solan – aye, Christopher Benn - aye, Steve Mehan - aye, Rick Burke – abstained due to late arrival, Thomas Carrangi – aye.

Carried 6 – 0

Abstained - 1

Brian White #22-06
454 Rt. 32 South
Schuylerville, NY 12871
S/B/L 195.9-1-2 Rural

Applicant seeks a 20' front setback variance to construct a garage in order for them to have the potential of processing honey from their bees. The proposed garage will be in line with their house. The required 40' setback would put the garage on top of their septic tank and require the relocation of a retaining wall.

Applicant Brian White appeared before the Board, reviewed his application and noted that the existing garage is dilapidated and he'd like to build a new garage on the same footprint, but make it a bit larger and aligned to the house. He said he needs a variance to build the garage in line with the house, as the house has a front setback of 20' which is why he seeks the 20' variance for the garage. He can't go back further as he has a double septic tank and if he were to go by current setbacks, it would put the new garage on top of it and require the relocation of a retaining wall, in line with the rear of the house.

Clifford Hanehan questioned how far to bring the garage forward to the house.

Applicant Brian White responded 4' – 5'. The house currently is at 25' setback and 20' from the road.

Clifford Hanehan clarified that the Applicant is trying to stay on the same footprint, but to make it a bit larger, pushes it forward.

Applicant Brian White responded correct.

Applicant Brian White took his large drawing to the table and reviewed it with the Board. He showed where the leach field is and added he is putting in a turn-around so he won't have to back out onto the road. After a lengthy discussion with the applicant, Chairman William Moreau said he can't maintain the original footprint of the garage and the request is not out of character for the area.

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

Proof of Notice having been furnished by newspaper on April 15, 2022, Chairman William Moreau opened the Public Hearing at 7:28 p.m., asking those wishing to speak to the Board to please stand, state their name and address.

Seeing as no one wished to speak, **Chairman William Moreau closed the Public Hearing at 7:29 p.m.** He then asked if there were any further questions or comments of the Board; there were none.

Chairman William Moreau went through the Balancing Test, line by line, with the Board:

1. *Whether benefit can be achieved by other means feasible to applicant* – Christopher Benn said not really due to the lay of the land. All Board members.
2. *Undesirable change in neighborhood character or detriment to nearby properties* – Clifford Hanehan said this is making it better. Chairman William Moreau and Board agreed.

3. *Whether request is substantial* – Christopher Benn said no and Chairman William Moreau said no, as did the entire Board agreed.

4. *Whether request will have adverse physical or environmental effects* – Christopher Benn said no, as did the Board.

5. *Whether alleged difficulty is self-created, relevant but not determinative* – Clifford Hanehan said no, it's preexisting and he's retrofitting to make it work. Chairman William Moreau said he's doing the best he can with the contours of the land. Board members agreed.

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

A motion was made by Mark Solan, seconded by Clifford Hanehan, to accept the application as presented for the 454 Rt. 32 South property. Chairman William Moreau – aye, Clifford Hanehan - aye, Mark Solan – aye, Christopher Benn - aye, Steve Mehan - aye, Rick Burke – aye, Thomas Carrangi – aye.

Carried 7 – 0

**Tricia Pasos 22-03
873 Rt. 4 S
Schuylerville, NY 12871
S/B/L 183.-1-20.14 Rural**

**Representative: James Vianna, PLS
140 Lohnes Rd.
Stillwater, NY 12170**

Returning Applicant went before the Planning Board for subdivision, but due to a lack of frontage on the proposed lot, they've sent the Applicant to ZBA for a variance. Applicant seeks a 100' frontage variance in order to create a new lot for future residential construction. The future lot will be over 5 acres which will require 300' of frontage and only has 200'.

Jim Vianna, PLS, appeared on behalf of the Applicant. He reminded the Board he had been in front of them in January but hadn't sent Neighbor Notification letters and hadn't completed the survey at that time. The survey is now complete and notifications had gone out to neighbors. The Applicant is planning a two lot subdivision and to do so, a variance is needed. She needs a 100' front setback as the parcel requires 300' of frontage and only has 200'. There is a shared driveway to go over the stream and will split off just beyond the culvert. The new house will be built way back on the created lot, but there are no plans to build at this time.

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

Zoning Officer/Building Inspector Gil Albert responded he's good with this.

Chairman William Moreau asked if there were any Board comments or questions; there were none.

Proof of Notice having been furnished by newspaper on April 15, 2022, Chairman William Moreau opened the Public Hearing at 7:35 p.m., asking those wishing to speak to the Board to please stand, state their name and address.

Seeing as no one wished to speak, **Chairman William Moreau closed the Public Hearing at 7:36 p.m.** He asked if there were any further questions or comments of the Board; there were none.

Chairman William Moreau went through the Balancing Test, line by line, with the Board:

1. *Whether benefit can be achieved by other means feasible to applicant* – Mark Solan said no, he needs the road frontage; Board members agreed.
2. *Undesirable change in neighborhood character or detriment to nearby properties* – Rick Burke said no, as did Chairman William Moreau and the Board agreed.
3. *Whether request is substantial* – Clifford Hanehan said yes, but it doesn't disqualify this. Rick Burke added they're sharing a driveway so no new curb cut needed and the Board members agreed.
4. *Whether request will have adverse physical or environmental effects* – Christopher Benn said no, with the shared driveway there's no disruptions of the stream. Chairman William Moreau added the new house will be way up in the back and out of the wetlands.
5. *Whether alleged difficulty is self-created, relevant but not determinative* – Clifford Hanehan said no, it's an existing lot. Chairman William Moreau agreed, adding no extra curb cuts are needed as there's to be a shared driveway. Board members agreed.

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

A motion was made by Mark Solan, seconded by Christopher Benn, to accept the application for 873 Rt. 4 as presented. Chairman William Moreau – aye, Clifford Hanehan - aye, Mark Solan – aye, Christopher Benn - aye, Steve Mehan - aye, Rick Burke – aye, Thomas Carrangi – aye.
Carried 7 – 0

**Daniel Cashman #22-07
217 Co. Rd. 68
Saratoga Springs, NY 12866
S/B/L 168.-3-41 Rural**

Applicant seeks a 7' two sides setback variance in order to build an extension on his home.

Applicant Daniel Cashman appeared before the Board and reviewed his application. He said the house was built in 1955 and is 51' from the road. He is seeking a variance to build an extension onto his current home.

Christopher Benn questioned that he's not moving the new garage further toward the boundary line, just making the garage bigger front to back.

Applicant Daniel Cashman responded yes.

Mark Solan questioned if a variance is needed, as he's not going further in that direction than the existing structure.

Zoning Officer/Building Inspector Gil Albert stated this will be attached, so it will no longer be an accessory building, which means he needs only the 7' two sides variance, as all others are existing as his application shows. (original application had shown a need for more than the 7')

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

Zoning Officer/Building Inspector Gil Albert responded he is fine with this.

Chairman William Moreau then asked Town Counsel Attorney Jackie P. White for her opinion and she had no opinion for this application.

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

Proof of Notice having been furnished by newspaper on April 15, 2022, Chairman William Moreau opened the Public Hearing at 7:44 p.m., asking those wishing to speak to the Board to please stand, state their name and address.

Seeing as no one wished to speak, **Chairman William Moreau closed the Public Hearing at 7:45 p.m.** He asked if there were any further questions or comments of the Board; there were none.

Chairman William Moreau went through the Balancing Test, line by line, with the Board:

1. *Whether benefit can be achieved by other means feasible to applicant* – Christopher Benn, Clifford Hanehan and Mark Solan said no. Chairman William Moreau said no and he's not encroaching on the existing building line; Board members agreed.
2. *Undesirable change in neighborhood character or detriment to nearby properties* – Christopher Benn said no, as did Mark Solan and the Board.
3. *Whether request is substantial* – Clifford Hanehan and Christopher Benn said no, as did and the entire Board.
4. *Whether request will have adverse physical or environmental effects* – Christopher Benn and Chairman William Moreau said no; Board agreed.
5. *Whether alleged difficulty is self-created, relevant but not determinative* – Chairman William Moreau said no, adding it was built pre-zoning and he's trying to stay within the footprint and not encroaching onto the existing side setbacks of the property. Board members agreed.

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

A motion was made by Christopher Benn, seconded by Mark Solan, to grant the 7' two sides setback variance, as clarified at the meeting. Chairman William Moreau – aye, Clifford Hanehan - aye, Mark Solan – aye, Christopher Benn - aye, Steve Mehan - aye, Rick Burke – aye, Thomas Carrangi – aye.

Carried 7 – 0

**Stanley Boyark Jr. #22-08
1170 Rt. 9P
Saratoga Springs, NY 12866
206.6-2-40 Lake Residential**

Applicant seeks the following variances: 19' front setback, 10.2' back setback, 16.4' two sides setback and a 4.5' side setback to change the preapproved variances granted by the Board in July of 2021.

Applicant Stanley Boyark appeared before the Board and stated he was before them last July. The land is now surveyed, and as such, the numbers are different so he's tweaked the numbers

with this application. He said the north side is now 6” different, back is now 14.8’ and south side is 8.1’. The footprint is smaller now. The north side, on the original foundation, was 1475 sq. ft. and now is 1224 sq. ft., including the porch. He took down the trees that he told the neighbor he would, the application is now 251 sq. ft. less than the previous camp was. He reviewed photos with the Board and added that everyone behind his property now have better views than they had with the removal of the trees.

Chairman William Moreau asked if there were any Board comments or questions; there were none.

Chairman William Moreau asked for the opinion of the Zoning Officer.

Zoning Officer/Building Inspection Gil Albert responded he has no issue with this.

Chairman William Moreau asked if Counsel had an opinion; there was none.

Proof of Notice having been furnished by newspaper on April 15, 2022, Chairman William Moreau opened the Public Hearing at 7:53 p.m., asking those wishing to speak to the Board to please stand, state their name and address;

Henry (Hank) Dufresne, 29 Belanger Ave., Waterford, NY 12188-9227, stated he owns 1172 Rt. 9P, which is his summer residence. He has no concerns with this or with Stanley. He allowed him to take out one of his pines to assist with neighbor views, adding that you can’t help that everyone can’t have views of the lake. He then stated that Mr. Prescott, who lives behind him at the lake, has a sump pump pumping water which has flooded 20’ of his property. He showed photos to the Board and said it’s not right that someone does this to another’s property.

Chairman William Moreau told him to talk with Zoning Officer/Building Inspector Gil Albert and Gil will go out to the property.

Seeing as no one further wished to speak, **Chairman William Moreau closed the Public Hearing at 8:00 p.m.** He then asked if there were any further questions or comments of the Board; there were none.

Chairman William Moreau went through the Balancing Test, line by line, with the Board:

1. *Whether benefit can be achieved by other means feasible to applicant* – Christopher Benn said no, he’s improving the property and going with a smaller footprint. Board members agreed as well.
2. *Undesirable change in neighborhood character or detriment to nearby properties* – Steve Mehan, Christopher Benn and Chairman William Moreau said no, he’s improving the viewshed for others.
3. *Whether request is substantial* – Clifford Hanehan said no, it’s substantially less; Chairman William Moreau, Christopher Benn and the rest of the Board agreed.
4. *Whether request will have adverse physical or environmental effects* – Christopher Benn, Mark Solan and Chairman William Moreau said no; the entire Board agreed.
5. *Whether alleged difficulty is self-created, relevant but not determinative* – Mark Solan, Rick Burke and Chairman William Moreau and Christopher Benn said no, as did the Board.

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

A motion was made by Steve Mehan, seconded by Rick Burke, to grant the variances as presented for 1170 Rt. 9P. Chairman William Moreau – aye, Clifford Hanehan - aye, Mark Solan – aye, Christopher Benn - aye, Steve Mehan - aye, Rick Burke – aye, Thomas Carrangi – aye.
Carried 7 - 0

Interpretive Appeal of Determination Continued Public Hearing

**Mr. & Mrs. L. Farone #22-01
717 Lake Ave, Rt. 29
Saratoga Springs, NY 12866
S/B/L 155.-1-63.11 Rural Residential**

Representative: Matthew Norfolk, Attorney

Applicants appeal the determination of Zoning Officer Gil Albert in regards to what they believe is a zoning violation at 727 Rt. 29.

Chairman William Moreau stated this application was discussed at length at the previous meeting, the public hearing was held and closed and the Board took the time to review all that was said and presented to them, as well as getting advice from Counsel. Chairman William Moreau then went through Resolution 22-01:

**TOWN OF SARATOGA ZONING BOARD OF APPEALS
RESOLUTION #22-01
INTERPRETATIVE APPEAL OF DETERMINATION**

WHEREAS, Alicia and Louis Farone (“Applicants”) seek an “interpretive appeal” of what they have characterized as a determination of the Code Enforcement Officer related to property located at 727 Lake Avenue in the Town of Saratoga (the “Property”), which is currently owned by Craig and Maria Dempsey; and

WHEREAS, the materials presented to the ZBA indicate that Applicants, through their counsel, sent the Town Code Enforcement Officer Gil Albert (“CEO”) a letter dated July 30, 2021 requesting that the CEO enforce alleged Zoning Code violations at the Property related to the holding of events and renting the Property as an “Airbnb rental”; and

WHEREAS, by letter dated October 13, 2021, the CEO informed Applicants’ counsel that he reviewed Applicants’ request for enforcement and found “that there are no zoning violations to be enforced” and that “[t]he Event barn has been properly approved by the Planning Board with guidelines and they have been in compliance since approval”; and

WHEREAS, Applicants, Applicants’ representative, a current owner of the Property and the Code Enforcement Officer have made statements and/or submitted materials to the ZBA; and

WHEREAS, the ZBA has reviewed all written materials submitted in this matter, including Planning Board Meeting Minutes related to a Special Use Permit granted for the Property; and

WHEREAS, the ZBA acknowledges its limited authority in considering interpretation appeals and acknowledges that it does not have the authority to enforce the Town of Saratoga’s Zoning Code as that is a discretionary power that lies with the CEO; and now therefore

THE ZBA MAKES THE FOLLOWING FINDINGS:

1. To the extent that Applicants are seeking to have the ZBA enforce the Town Zoning Code or require the CEO to enforce the Town Zoning Code, the ZBA lacks legal authority to grant the relief requested and it cannot do so.

2. The Property is the subject of a Special Use Permit granted by the Town Planning Board on November 16, 2016 which allows, among other things, use of the Property for events such as weddings not to exceed 80 people or 40 vehicles. This is evidenced by the Planning Board Meeting Minutes that are part of the record before the ZBA. Whether or not the property owner has allowed functions that exceed these thresholds is a matter of code enforcement and not an issue subject to ZBA review.
3. Applicants' reliance on Planning Board Minutes for meetings held subsequent to the November 16, 2016 Special Use Permit Approval to argue that there is no Special Use Permit allowing for these events such as weddings is misplaced and misleading. The minutes for these subsequent meetings indicate that a prior owner of the Property pursued an amendment of the Special Use Permit to allow for larger events exceeding the 80-person limit. It appears that the Special Use Permit was not amended to allow events that exceed 80 people, but while the requested amendment was under consideration, a "Temporary Certificate" was granted allowing for two events exceeding the 80-person capacity limit on specifically identified dates because they had already been reserved. The SUP approved on November 16, 2016 allowing events at the Property, with conditions, remains in effect.
4. To the extent Applicants have sought the ZBA's interpretation as to whether or not a wedding or event venue is permissible at the Property pursuant to a Special Use Permit, as opposed to a Use Variance, this issue cannot be considered by the ZBA. The Special Use Permit allowing events, including weddings, was approved by the Town Planning Board in November 2016 at a meeting Applicant Louis Farone attended and participated in according to the Planning Board Meeting Minutes provided by Applicants. Any timeframe in which the determinations of the Code Enforcement Officer and/or Planning Board that led to the issuance of the Special Use Permit in 2016 could have been challenged either administratively or through a Court proceeding have long expired. The ZBA cannot now make a determination on this underlying zoning issue six years after the Special Use Permit was issued. We believe this would be particularly inappropriate considering that the Applicants had actual knowledge of issuance of the Special Use Permit when it was issued six years ago; the record before the ZBA indicates that the current owners and their predecessors have used the property to host weddings during the intervening six years; and the current owner indicated that he did his due diligence prior to purchasing the Property by confirming with the Town that he could use the property for weddings as conditioned by the 2016 Special Use Permit.
5. Applicants also have included unclear claims that the Property is being unlawfully used as an "Airbnb rental". However, Applicants have not identified a specific Zoning Code provision of which they seek an interpretation. Additionally, there does not seem to be any provision of the Town Zoning Code that would prohibit rental of the Property.

NOW, THEREFORE, BE IT RESOLVED, that to the extent that any appeal of a determination/interpretation of the Code Enforcement Officer of October 13, 2021 is properly before the ZBA, the interpretation and determination of the Code Enforcement Officer was reasonable and had a rational basis and the Code Enforcement Officer's determination is upheld and affirmed.

After a lengthy discussion, **A motion was made by Christopher Benn, seconded by Rick Burke to accept Zoning Officer Gil Albert's determination of the Special Use Permit for 727 Rt. 29, clarifying the Zoning Board is not an enforcement board or governing body.**

Roll Call Vote:

Chairman William Moreau – aye

Clifford Hanehan – aye

Thomas Carringi – nay

Christopher Benn – aye

Steve Mehan – nay

Mark Solan – nay

Rich Burke - aye

Carried 4 – 3

Clifford Hanehan added this is not a zoning issue and can't be considered by the ZBA.

Attorney Jacquelyn Poulos White said he is appropriate that this is not a ZBA goal. This Board is not an enforcement body and the appeal is quite gray by the Applicant. Zoning Officer Gil Albert found no violation, the permit was issued in 2016, that permit is in place, it was never challenged and the time limit for that appeal to the Planning Board has expired.

Old Business: Attorney for the Crusado's, Stephanie Bitter, stated she will be at the May 23rd meeting for another public hearing.

New Business: None

A motion was made by Christopher Benn, seconded by Mark Solan, to adjourn the meeting at 8:45 p.m. Chairman William Moreau – aye, Clifford Hanehan - aye, Mark Solan – aye, Christopher Benn - aye, Steve Mehan - aye, Rick Burke – aye, Thomas Carringi – aye.

Carried 7- 0

Meeting Adjourned

Next meeting will be held on May 23, 2022, 7:00 p.m.

*Any and all submittals must be to the Clerk no later than 8:45 a.m. May 9, 2022 to be on the agenda.

Respectfully submitted,

Linda McCabe
ZBA Clerk