



# TOWN OF BALLSTON ZONING BOARD OF APPEALS MEETING

January 4, 2023  
7:30 pm

Town Hall Meeting Room  
323 Charlton Road, Ballston Spa, NY 12020  
www.townofballstonny.org

## ATTENDEES:

Annetta Dunham, Chairwoman  
Patrick Whitton, Vice Chairman  
Tim Long, Board Member  
Steve Merchant, Board Member  
Dan Mertzlufft, Board Member  
Jeff Stickles, Code Enforcement Official  
Bill Keniry, Attorney

## Call to Order

Mrs. Dunham called the meeting to order at 7:30 pm and the Pledge of Allegiance was recited.

## Approval of Previous Minutes

**MOTION:** Mr. Long made a motion to approve the December 7, 2022 meeting minutes as drafted. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

## Announcement

Mrs. Dunham asked Mr. Merchant to say a few words on behalf of the Board members.

Mr. Merchant stated that he wanted to thank the former Chairman, Michael Lesniak, for more than 30 years of dedicated service to the Town. He was always involved in zoning issues and found solutions. He always did his best for the Town residents. If you needed help with zoning issues, he was always there for you. Mr. Lesniak was great to work with and spent many hours on his own time to find the information needed to make good decisions for the Board. His knowledge of the landscape in this Town will be missed. Mr. Merchant stated that he wanted to thank Mr. Lesniak for all the years of support.

## OLD BUSINESS

### **Katz Outlet Road Area Variances (ZBA 2022-016)**

SBL 239.-1-8

Application for lot size and lot width area variances for a minor subdivision for four residential building lots. SEQRA Type 2 Action, exempt from review. Public Hearing scheduled.

**Mr. Walter Katz** and **Mrs. Maggie Katz**, owners of the Outlet Road property.



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Mr. Whitton stated that Mr. Katz is seeking a subdivision approval for his property on Outlet Road. He has 14.58 acres of land; the requirement for four lots is 20 acres so that is a difference of 5.42 acres. He is also seeking a lot width variance; the requirement is 250 feet and two of the four lots are 175 feet wide each so that is a difference of 75 feet for each of those two lots. He asked if Mr. Katz would like to add anything.

Mr. Katz stated that he has done phases one and two on Outlet Road and is finishing his project. He started last year and had no idea the rules had changed. The project was slowed due to weather and trying to get hold of an engineer. He has put a lot of money into infrastructure and this is the last phase of the job. He has brought down water and gas lines. He hasn't changed the way he does things; he started this project in the early 2000s.

Public Hearing open at 7:35.

**Ms. Dolores Draina** of 22 Outlet Road stated that she is here to make a request to the Board to not approve this request for variances. She can't find any justification for why this project should be allowed to go through, based on net acreage requirements; there are frontage and setback requirements. To approve this request for double the number of dwellings allowed by the new zoning would greatly undermine the purpose and intent of the regulations, which are supposed to preserve the rural lifestyle and community character of the Town. She doesn't believe that four houses crammed into this amount of frontage would accomplish that.

**Mr. Scott Draina** of 10 Outlet Road stated that he also doesn't agree with the project. The applicant stated they have 14-plus acres which is not enough for four building lots and with the new zoning it's not the total acreage, it's the net acreage, so subtract out the wetlands and he thinks there's just over 10 acres of usable, buildable land. That brings them down to a maximum of two building lots and he thinks that's pushing it with the setbacks and wetland buffer. He disagrees with this project as the applicant has applied for it.

Mr. Whitton stated that the Zoning Board is waiting for the Planning Board response to the project. He asked if the Public Hearing should be closed pending that response.

Mr. Keniry stated that the more likely option is to adjourn the Public Hearing until the next meeting which is February 1, 2023 at 7:30 pm, to allow the Planning Board to comment.

Mr. Whitton stated that the Board is waiting on the Planning Board so they cannot rule on this tonight. He stated that the survey shows that there are 14.58 acres of land. He asked Mr. Katz what the net acreage is with the wetlands removed.

Mr. Katz stated that he doesn't know.

Mr. Whitton stated that the requirement of five-acre lots is five acres of unconstrained land and there are constrained lands within this parcel which reduce that. The Board would need to know the actual number in order to make a determination; to include in the verbiage should they choose to approve or deny this application. One of the hardships Mr. Katz stated in the last meeting is the extension of utilities; he asked if that is correct.



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Mr. Katz answered affirmatively and stated that he would have to bring water down. When he did phase two, he brought an 8-inch line down to complete another four building lots. There was no reason to do that if he wasn't going to get four lots.

Mr. Whitton stated that at the last meeting Mr. Katz spoke of the costs of bringing water down, but the project narrative essentially says that water has been brought to the border of that property already. He asked if that is accurate.

Mr. Katz stated that he doesn't have the map. He brought it down as far as he had to in order to complete phase two of Ballston Shores, and then it was set up so he could extend the water. At that time, he left enough land for four building lots. He started the project a long time ago; it would have been done last year but with the frost coming in, everybody was busy. He put money into this to do it according to the way it was set up; what's right is right.

Mr. Merchant asked if Mr. Katz ever considered doing the two building lots and then seeing if the Town would be interested in the other land for a parking lot for the bike path.

Mr. Katz stated that he would be more than advantageous to that if it offsets his costs.

Mr. Merchant stated that maybe he should pursue that to see how it goes.

Mr. Katz stated that he could inquire about that tomorrow morning.

Mr. Whitton asked if there are renderings to show what the houses would look like on the lots. He sees the area where construction would exist but can't visualize what percentage of that area is occupied by a home.

Mr. Katz stated that this land is no different. If you've driven down Outlet Road, these houses are all going to be the same. He's not planning that; he's not into building anymore.

Mr. Whitton stated that Mr. Katz's interest at this time is to have salable lots, not to do the development.

Mr. Katz stated that he might hold a building lot if his son wants to build a house; all the houses would be in line with everything that's put up down that road. The Board could check the property values of the houses.

Mr. Whitton stated that he looked at the lots on Outlet Road and the smallest was .92 acres, but it didn't have the constraints that these lots have, with the 100-foot buffers for construction, so he couldn't picture the home plus the septic in this area. He doesn't see a visual representation of it in the submitted materials.

Mr. Katz stated that he would have gone into that but until he has his approval, he could spend thousands more on engineering fees, etc. He has cleared land and his engineer has areas that are fine for septic systems.

Mr. Long stated that he saw the perk tests were done.

Mr. Katz stated that they did the large holes for perk tests so all four lots have an area to place a septic system and he plans to bring in public water.



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Mrs. Dunham polled the Board for questions or comments.

Mr. Katz stated that up until this spring this would have been approved without going through this. He started this last year.

Mr. Whitton stated that the zoning changes occurred January 1, 2022; he has suffered the same process.

Mr. Katz stated that weather conditions, getting ahold of people, etc. took time and now it's biting him.

Mrs. Dunham stated that the Board can't act on the application and must adjourn the Public Hearing until they get a response from the Planning Board.

**MOTION:** Mr. Whitton made a motion to adjourn the Public Hearing for the Katz Outlet Road variances until the February 1, 2023 meeting at 7:35 pm. Mr. Long seconded the motion. All in favor. **CARRIED.**

Mr. Katz thanked the Board.

Mr. Richard Doyle of 67 Lakehill Road stated that he is familiar with what Mr. Katz has done from his years on the Planning Board. His inquiry is as to whether or not the sanitary service can be considered in an alternate location.

### **8 Townley Drive Area Variance (ZBA 2022-017)**

SBL 257.15-1-4

Application for a side yard setback variance for the installation of a shed. SEQRA Type 2 Action, exempt from review. Public Hearing scheduled.

**Mr. David Silvestri**, owner of 8 Townley Drive.

Mr. Whitton stated that Mr. Silvestri is seeking a variance. The amount of the relief that was discussed at the last meeting and is reflected in the minutes, is different than what is shown on the application.

Mr. Silvestri stated that he originally applied for two feet off the property line; four feet was discussed at the meeting.

Mr. Whitton stated that Mr. Silvestri is seeking a 16-foot variance to build a shed four feet off the property line. He asked if Mr. Silvestri had anything to add.

Mr. Silvestri stated that he has nothing additional beyond the narrative; they are making changes to their yard to support their family.

Public Hearing open at 7:51 pm.

**Mr. Richard Doyle** of 67 Lakehill Road stated that he is familiar with the property. He has concerns regarding the size, construction, location, appearance, and purpose of the shed. He discussed an extension the applicant



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built onto an existing shed which houses a vehicle and would like to know if the new shed will house a vehicle as well. He stated that he wants to make sure the back of people's homes look presentable as there is a building lot. He doesn't know why they need a shed so large as other homes have smaller sheds; it's asking for a lot. There is a problem with the back property line, which abuts his daughter's property; the plot plan the applicant provided doesn't quite match.

Mrs. Dunham thanked Mr. Doyle and stated that the applicant provided information on the use of the shed; it will not be a garage.

**Ms. Tricia White** of 16 Roseland Boulevard, daughter of Mr. Doyle, stated that her side property line abuts the applicant's back yard. It is currently a wooded area. There have been ongoing issues with the applicant. The applicant's existing shed is five feet off the property line. They put a stake onto her property and built an extension onto that shed on her property. She has two surveys that match; the one the applicant provided does not match. The property lines keep getting pushed and she wants to protect her property and that of the elderly neighbor.

Mr. Mertzlufft asked if there is a metal stake in the area.

Ms. White stated that it was removed, and they put in a wood stake on her property.

Mr. Mertzlufft asked if she knows if it is indeed on her property.

Ms. White answered that it is on her property, as is part of the existing shed, based on the surveys she has.

Mrs. Dunham stated that Ms. White is talking about the rear property line, but this application is for the side.

Ms. White stated that they are questioning the property lines. If the back line keeps getting pushed, is the side line being pushed.

Mr. Doyle stated that the back line is not the case before the Board; they are just putting it out there.

Mr. Mertzlufft stated that that is not under the purview of this Board; it must be done privately.

Ms. White stated that if the zoning is being changed the property line should be looked at before approval.

Mr. Mertzlufft stated that the Board has five criteria to consider. Lack of clear property lines is a problem.

Mr. Doyle stated that some of the information doesn't jive. He will check the maps in the Assessor's Office.

Mrs. Dunham polled the Board for questions or comments.

Mr. Merchant asked Mr. Stickles if he had looked at the side yard markers.

Mr. Stickles answered no, he has not been there.

Mr. Merchant stated that he saw stakes with orange ribbons on them when driving by.



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Mr. Whitton asked Mr. Stickles if he would be verifying the location.

Mr. Stickles stated that he would need to see a survey to verify property lines.

Mr. Silvestri stated that he had a survey done by Santo Associates in support of a fence and shed installation. What he provided to the Board is a screenshot of a portion of that survey with some overlays.

Mr. Merchant asked if they put in the stakes.

Mr. Silvestri stated that he thinks the stakes were existing in that corner and the pins are in the front. The surveyor worked according to that and looked at neighboring properties to make sense of the situation at the time. There are no plans to park a vehicle in the shed. His wife would like a gazebo in the back yard, so they decided to combine a gazebo and storage shed with a dividing wall.

Mr. Whitton asked if it will be partitioned, and if it will be half enclosed and half screened.

Mr. Silvestri stated that it wouldn't really be like a gazebo but would be gazebo-like as it will have lots of windows; half of the long side and one end would be windows.

Mrs. Dunham asked what the height will be.

Mr. Silvestri stated that it is a standard shed and guessed that it is seven feet high at the base; he doesn't know off the top of his head. He apologized for putting things in the back of the yard. To his knowledge, and to the survey, the shed extension is not on the neighboring property, but it does get close to the property line.

Mrs. Dunham asked if Mr. Silvestri has anything in writing from the owners of 6 Townley Drive in support of his application.

Mr. Silvestri answered no and stated that he included their contact information in his application narrative. He has been in contact with the neighbor regarding tree removal. The neighbor stated that they could come in off his property to land the shed. Mr. Silvestri stated that they would repair any damage done to the neighbor's lawn.

Mrs. Dunham asked if there is an actual letter in support of this.

Mr. Silvestri stated that he didn't think it was necessary but that the Board is free to contact the neighbor.

Mr. Doyle stated that Mr. Silvestri has no variance off the back lot line either. The zoning on a back line is the same as the zoning on the front line; he is maybe one or two feet off his line. There is a problem here.

Mrs. Dunham stated that that is not why the applicant is here; he is here for the side setback.

Mr. Doyle stated that Mr. Silvestri needs to get another variance and file another report so they can get something decided between them.



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**MOTION:** Mr. Mertzlufft made a motion to close the Public Hearing at 8:11 pm. Mr. Whitton seconded the motion. All in favor. **CARRIED.**

Mr. Whitton read the five area variance criteria aloud for the Board to consider.

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (Mr. Whitton stated that there would be little to no impact.)

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (Mr. Whitton stated no.)

[3] Whether the requested area variance is substantial; (Mr. Whitton stated yes.)

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (Mr. Whitton stated no.)

[5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance. (Mr. Whitton stated no.)

**MOTION:** Mr. Whitton made a motion that David Silvestri Jr. of 8 Townley Drive get a side yard setback variance relief of 16 feet for a 10-foot by 28-foot shed, for four feet off the property line. Mr. Merchant seconded the motion. Mr. Mertzlufft voted “present,” all others voted in favor. **CARRIED.**

Mr. Mertzlufft asked if any other variances are needed.

Mr. Whitton stated that Mr. Stickles would have presented that information to the Board if more variances were needed.

Mr. Long stated that Mr. Stickles will need a survey showing placement, with the property lines well-defined before granting the building permit.

Mr. Stickles answered affirmatively.

Mr. Silvestri asked how to work with Mr. Stickles for the shed.

Mr. Stickles stated that he can come in to apply for the building permit and the Building Department will provide information regarding the proper documentation requirements.

Mr. Silvestri thanked the Board.



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### **Astro Chemical Area Variance (ZBA 2022-018)**

3 Mill Road Extension; SBL 257.16-1-13

Application for a commercial building footprint area variance for the construction of a building addition. SEQRA Unlisted Action, complete. Public Hearing scheduled.

**Mr. Michael Wantuch** of Astro Chemical Company, Inc. and **Mr. Gavin Vuillaume** of Environmental Design Partnership, LLP.

Mr. Whitton stated that Astro Chemical is seeking a building footprint variance in order to build an office building that is 35,900 total SF; the requirement is 2000 SF which is a difference of 33,900 SF.

Mrs. Dunham asked if they understood that the County referral response is needed before the Board can act.

Mr. Vuillaume answered affirmatively and stated that they received advance notice of that information but wanted to get through the Public Hearing tonight.

Mrs. Dunham stated that the Board can open the Public Hearing but cannot vote tonight.

Mr. Whitton asked if the applicants wanted to say anything before the hearing was opened.

Mr. Vuillaume stated that they gave a lengthy discussion at the last meeting and the Board didn't ask for any additional information, so he had nothing further.

Public Hearing open at 8:18 pm.

No one wished to speak.

**MOTION:** Mr. Whitton made a motion to adjourn the Public Hearing at 8:19, pending the County referral response. The next meeting is February 1, 2023, and the Public Hearing will be on the agenda for 7:40 pm. Mrs. Dunham seconded the motion. All in favor. **CARRIED.**

The applicants thanked the Board.

### **301 Middleline Road Area Variance (ZBA 2022-019)**

SBL 227.-1-6

Application for a lot width area variance for the future construction of a single-family dwelling. SEQRA Type 2 Action, exempt from review. Public Hearing scheduled.

**Mr. Dylan Helo** and **Mrs. Mayah Helo**, property owners of 301 Middleline Road.

Mr. Whitton stated that Mr. Helo is seeking a variance for 250 feet of frontage; the actual is zero because this is a landlocked parcel that has an easement to Middleline Road. He asked if Mr. Helo had anything to add.





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Mr. Helo stated that everything was covered in the last meeting; he has nothing further to add.

Mr. Whitton asked Mr. Stickles for an interpretation of the frontage; it's listed on the application as zero.

Mr. Stickles stated that that is correct.

Mr. Whitton asked how the easement plays into the ability to build on this lot.

Mr. Stickles stated that it's a deeded easement, filed with the County.

Mr. Whitton stated that it's one of these weird situations where the verbiage doesn't match the situation.

Mr. Stickles answered affirmatively.

Public Hearing open at 8:21pm.

No one wished to speak.

Mr. Whitton read aloud a statement received regarding the project:

To Whom It May Concern:

We currently reside at 542 Randall Road, which the driveway for the new dwelling at 301 Middleline Road runs behind. We thought it should be known that the driveway that was built has caused draining issues on our property. The water that used to run out and into the swamp behind us builds up now and the wooded area between our house and the driveway is flooded out, routinely. As a result, many trees in our backyard have uprooted and we expect there will be many more. Although, there obviously has been an increase in traffic and noise behind us, as well, we are not writing, today, to complain or protest about the construction. We just wanted to make the aforementioned information known to the zoning board and to have it on record. Thank you for your time and consideration.

Sincerely,

Paul and Stephanie Matties

542 Randall Road

Ballston Spa, NY 12020



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**MOTION:** Mr. Whitton made a motion to close the Public Hearing at 8:23 pm. Mr. Mertzlufft seconded the motion. All in favor. **CARRIED.**

Mr. Whitton asked if Mr. Helo is having issues with the road flooding.

Mr. Helo stated that they should probably put in a pipe to help with drainage. They could add some drainage to help the neighbors. He can meet with the neighbors to let them know they are the new owners and can make it better.

Mr. Merchant asked if there are areas on the road to pass, for fire trucks, etc.

Mr. Helo answered affirmatively and stated that the road is approximately 30 feet wide so the big trucks can pass each other now. There are pull-offs and he will meet with Mr. Stickles to determine if there are more needed.

Mr. Whitton read the five area variance criteria aloud for the Board to consider:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (Mr. Whitton stated no.)

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (Mr. Whitton stated no.)

[3] Whether the requested area variance is substantial; (Mr. Whitton stated yes.)

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (Mr. Whitton stated no.)

[5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance. (Mr. Whitton stated no.)

**MOTION:** Mr. Whitton made a motion for Dylan Helo of 301 Middleline Road, for a sufficient lot width variance; that is a 250-foot variance for frontage. This is a Type 2 Action under SEQRA and is exempt from review. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

The applicants thanked the Board.

### **Morris Ford Signage Variance (ZBA 2022-020)**

872 State Route 50; SBL 248.-2-40

Application for a signage variance for number and square footage of signs. SEQRA Type 2 Action, exempt from review. Public Hearing scheduled.



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Mr. Whitton stated that the applicants have tabled their application until the Saratoga County referral response is received.

### **Suburban Services Group Area Variance & Law Interpretation (ZBA 2022-021)**

852 and 854 Saratoga Road; SBL 257.-3-30, 257.-3-26.1

Application for an interpretation of the law as it applies to section 138-13 of the Zoning Law, and an area variance for site coverage. SEQRA Unlisted Action, complete. Public Hearing scheduled.

**Mr. Kurt Bedore** of KB Engineering & Consulting, LLC, and **Mr. Craig MacDonald**, owner of 2150 Properties.

Mr. Whitton stated that Suburban Services Group is here for an area variance and law interpretation. This project is also waiting for the Saratoga County referral response. They are proposing site coverage of 56,962 SF; the requirement is 44,353 SF which is a difference of 12,609 SF. He asked if the applicants would like to add anything.

Mr. Bedore stated that the only significant update since the last meeting is that Mr. MacDonald has transferred the 854 Saratoga Road parcel from JennCom, one of his other LLCs, over to 2150 Properties. This has been filed with the County Clerk's office. Both lots are now separate but are commonly owned by 2150 Properties. The lot line adjustment to combine the two lots is pending. They are waiting on the County referral response and look forward to bringing the matter to resolution.

Public Hearing open at 8:27 pm.

No one wished to speak.

**MOTION:** Mr. Whitton made a motion to close the Public Hearing at 8:28 pm. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

Mr. Bedore asked for a sense of the Board's position on the matter. He doesn't think there will be anything of substance from the County Planning Board.

Mr. Merchant asked if the project will bring the lot coverage up to 38%.

Mr. Bedore stated that the variance relief they are seeking is 8%; with the lots combined the coverage will be 38%. He asked if the Board has any reservations or comments.

The Board members stated that they had no comments.

Mr. Bedore stated that they have submitted an updated package to the Planning Board and would like to keep things going in parallel. He thanked the Board.



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**40 Hickory Grove Lane Area Variance (ZBA 2022-022)**

SBL 249.10-2-26, 249.10-2-1

Application for a lot size area variance to allow for a lot line adjustment from the adjacent property. SEQRA Type 2 Action, exempt from review. Public Hearing scheduled.

**Ms. Patricia Marcinkowski and Mr. Jan Marcinkowski**, property owners of 40 Hickory Grove Lane.

Mr. Whitton stated that the applicant is seeking .79 acres of relief, as there are 1.2 acres, and two acres are required. This is for the lot line adjustment on the lake to capitolate a fire pit area that's used by the primary home there as the secondary lot is vacant. He asked if the applicant would like to add anything.

Ms. Marcinkowski did not have anything to add.

Public hearing open at 8:30 pm.

No one wished to speak.

**MOTION:** Mr. Whitton made a motion to close the Public Hearing at 8:31 pm. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

Mr. Whitton polled the Board for questions or comments; there were none.

**MOTION:** Mr. Whitton made a motion for Patricia Marcinkowski for 40 Hickory Grove Lane for an area variance of .79 acres, the actual is 1.21 acres, for a lot line adjustment. This is a Type 2 Action under SEQRA and is exempt from review.

Mr. Whitton noted that he hadn't read the area variance criteria; he read the five area variance criteria aloud for the Board to consider:

- [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (Mr. Whitton stated no.)
- [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (Mr. Whitton stated no.)
- [3] Whether the requested area variance is substantial; (Mr. Whitton stated no.)
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (Mr. Whitton stated no.)
- [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance. (Mr. Whitton stated yes.)



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Mr. Whitton read the motion again:

**MOTION:** Mr. Whitton made a motion that Patricia Marcinkowski at 40 Hickory Grove Lane get an area variance of .79 acres for the lot line adjustment to the piece of property; the actual lot is 1.21 acres. This is a Type 2 Action under SEQR and is exempt from review. Mr. Merchant seconded the motion. All in favor.

**CARRIED.**

Ms. Marcinkowski asked if they now go to the Planning Board.

Mr. Stickles answered affirmatively.

The applicants thanked the Board.

### NEW BUSINESS

#### **75 Lake Road Area Variance (ZBA 2023-001)**

SBL 249.-2-49

Application for an area variance for the construction of a permanent residence.

**Ms. Suzanne Baumgarten**, representative for Mr. Kevin Nauman, property owner of 75 Lake Road.

Mr. Whitton stated that the applicant is seeking an area variance. The applicant has a primary residence there now which is a two-story garage with an apartment on top.

Ms. Baumgarten stated that the applicant originally put in for a use variance, but it was switched to an area variance. They are constructing a second residence that will be the primary residence. Because there is already a primary residence, they need a variance.

Mr. Whitton stated that the applicant wants to put a second house there, and because there is an existing primary residence, you can't have two primary residences on a lot. However, the zoning allows for a secondary structure with an apartment in it, which this does have, so this variance is being requested to build the primary residence and reclassify the garage as the accessory apartment structure.

Mr. Long asked, once they're done and have two residences, one primary and one secondary, what difference it makes what each residence is called.

Ms. Baumgarten stated that she doesn't know, it doesn't matter to them.

Mr. Long asked if the barn with the apartment on top could continue to be the primary residence forever.



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Mr. Stickles stated that you can't make a home accessory structure; that's creating a residence. What's there now is a two-bay garage with an apartment above it which was built first, and now they want to build their home. You're only allowed one primary structure per parcel, so we have to reclassify, if they get the variance. The residential structure becomes the primary structure when it's finished, and then the assessor must reclassify the other structure as a garage and accessory structure with an apartment, not as a primary.

Mr. Long stated that the secondary structure can't be a home.

Mr. Stickles answered affirmatively.

Mr. Long stated that even though the apartment is a home it can be a secondary.

Mr. Keniry stated that this is an accessory structure with an apartment, the way it's been interpreted.

Mr. Long stated that he was trying to determine if this process could be avoided.

Mrs. Dunham asked if there is any kind of water source, like a stream, pond, etc. on this property.

Ms. Baumgarten answered no, there's a stream behind the property but it's not within the property boundaries.

Mrs. Dunham stated that it's on someone else's property.

Ms. Baumgarten answered affirmatively.

Mr. Merchant asked about the acreage, with the new zoning, for having two homes there with one parcel number.

Mr. Stickles stated that there is one home; the other one is an accessory structure with an apartment.

Mrs. Dunham asked if they have anything in writing from the adjoining neighbors.

Ms. Baumgarten answered no. She stated that she doesn't think they would object as there are only two and they have good relationships with them.

Mr. Long asked how many acres the property is.

Ms. Baumgarten answered that it is a three-acre lot.

Mrs. Dunham asked if they could get letters from the neighbors in support of this; that always helps the case.

Ms. Baumgarten stated that she thinks Mr. Nauman has spoken with them. She asked if that is what the Public Hearing is for.

Mrs. Dunham answered affirmatively and stated that having it in advance makes it easier.

Mr. Keniry stated that, following Mr. Long's thought, he believes Mr. Long was concerned with whether or not an applicant has an intent to further subdivide property, and in terms of acreage, it is not sufficient. Mr. Keniry



## TOWN OF BALLSTON ZONING BOARD OF APPEALS MEETING

**January 4, 2023**  
**7:30 pm**

Town Hall Meeting Room  
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stated that he thinks the Board wants to be assured that there's no intent to subsequently come back seeking a subdivision. He asked Mr. Long if the interpretation was correct.

Mr. Long answered affirmatively.

Ms. Baumgarten stated that there is no intention at all.

Mr. Merchant stated that he was asking because of the five-acre rule.

Mr. Stickles stated that it's either in the waterfront or Ballston Lake residential district.

Ms. Baumgarten stated that it's in the Ballston Lake residential district.

Mr. Merchant asked what the difference is with the Outlet Road application.

Mr. Stickles stated that the Outlet Road application is in the rural district.

Mrs. Dunham stated that this is a two-step process. Tonight, we gather information and then we schedule a Public Hearing, which would be at the next meeting on February 1, 2023.

Ms. Baumgarten asked if the Public Hearing could be set for March as they are scheduled to be away, or if they would need another agent if it's too much time.

Mr. Mertzlufft stated that the hearing can only be held open for 91 days.

Mr. Keniry stated that once the Board has an agreement with the applicant, based on their own schedule, that the Public Hearing will not be held in the month of February but will be held in the month of March, that should be okay if it's agreed on the record with the applicant.

Mr. Long stated that he thought the 90-day window started when the Public Hearing is opened.

Mr. Keniry answered affirmatively and stated that it is an additional consideration, but he doesn't think it will get to that.

Mr. Long stated that if the hearing is opened in March, it doesn't have to be closed until June.

Mr. Keniry stated that the question is whether you open a Public Hearing when the applicant isn't here and may have some other agent. It's up to the Board to decide their preference.

Mrs. Dunham asked if the Board could make a motion to set the hearing for March instead.

Mr. Keniry answered affirmatively.

Mrs. Dunham asked if the project should be classified under SEQR.



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Mr. Keniry stated that it's an oddity in terms of classification but is closest to an area variance. He thinks it's a fair characterization to classify it as a Type 2 Action. It's up to the Board to decide about scheduling a Public Hearing.

**MOTION:** Mr. Whitton made a motion for an area variance for 75 Lake Road, to set a Public Hearing for March 1, 2023, at 7:35 pm. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

Ms. Baumgarten asked if, assuming the application is approved, the primary and secondary structure classification changes would be made through the Assessor's Office.

Mr. Stickles stated that it would be handled through the Building Department. The Assessor information would be completed as part of the process.

Ms. Baumgarten thanked the Board.

**MOTION:** Mr. Whitton made a motion to adjourn the meeting. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

Meeting adjourned at 8:46 pm.

Respectfully submitted,

*Kerri Mains*

Kerri Mains  
Zoning Board Secretary