

**Cayuga County GML §239 l, m & n Review Committee
Referral Form**

To: Cayuga County Department of Planning
and Economic Development
160 Genesee Street; 5th Floor
Auburn, New York 13021

Phone: (315) 253-1276
Email: planning@cayugacounty.us

From: Municipal Board:
Primary Contact:
Address:

Town Sterling ZBA

Lisa Somers, Clerk

1290 State Route 104A, Sterling NY 13156

Phone: **315-564-7779**

Email: **lsomers2@twcny.rr.com**

Applicant: Circle T Sterling, LLC

Site Address: 13181 Sanford Road, Martville

Tax Map Number: 20.00-1-68.1 Acres: 111.4

Current Zoning: AR Current Land Use: Rural & vacant

Project Description: Are Variance approval by ZBA required to validate previously granted
for Special Use Permit for commercial mining operation of sand and gravel.

Variancerequested is in regards to the setback distance required between the access road of
the mine and adjacent residential structures.

(attach additional pages if necessary)

Proposed Action(s)

Please complete the section below that pertains to the proposed action being submitted for review.

Local Law or Regulation

New

Amendment

Comprehensive Plan

Local Law

Zoning Law / Ordinance

Other

Site Plan

Proposed Improvements: _____

Intended Use(s): _____

Will the proposed project require a variance? Yes No Specify: _____

Is a State or County DOT work permit required? Yes No Specify: _____

Special Use Permit

List the section(s) of the local zoning law/ordinance that requires a special use permit for the proposed use: _____

Required conditions: **SUP granted 2/16/18 in accordance with LUR Article 10-5-J**

Will the proposed use require a variance? Yes No Specify: _____

Subdivision

Name: _____ Preliminary Final
Number of Lots: _____ Type: Residential Single/Multi-Family Commercial/Industrial
Is Public Water available? Yes No Is Public Sewer available? Yes No
Is a State or County DOT work permit required? Yes No Specify: _____
Will the proposed project require a variance? Yes No Specify: _____

Variance

Type: Area Use

List the section(s) of the local zoning law/ordinance requirements that the variance is being sought for, and the specific details of the variance request: **Sterling Land Use Regulations Article 10-5(J)(2)(d). Are a variance re is in regards to the setback distance required between the access road of the mine and adjacent residential structures.**

SEQR Determination

Please provide the State Environmental Quality Review (SEQR) information below regarding the type of SEQR action and, if the SEQR process is completed note the SEQR finding. The GML §239 l, m & n Committee does not require full completion of the SEQR process and a local determination prior to reviewing and acting on a referral, however a complete referral package must include a completed and signed Part I of the SEQR forms.

Action: Type I Type II Unlisted Action Exempt
Finding: Positive Declaration- Draft EIS Conditional Negative Declaration Negative Declaration No Finding (Type II Only)

SEQR Determination Made by (Lead Agency): NYSDEC Date: 5/4/15

Attachments

Local Application Form SEQR Forms Text Amendment Other _____
 Site Plan Survey Subdivision Plat (map)

To my knowledge, this referral request, as required by NYS GML §239 l, m & n, is complete and includes copies of all documents/applications required of and submitted by the applicant to the local municipality, and supporting materials to assist the Cayuga County GML §239 l, m, & n Review Committee ("Committee") in its review. I understand that if no formal action is taken by the Committee within 30 days of receipt of this referral, then the referring board identified on this form may proceed without the Committee's recommendation, unless an extension of time is agreed upon or unless the Committee's recommendation is received at least 2 days prior to local municipal action.

Lisa Somers, ZBA Clerk
Name and Title of Person Completing this Form

12/6/18
Transmittal Date

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November 30, 2018

Hon. Richard Palmieri, Chairman and
Members of the Town of Sterling Zoning Board of Appeals
1290 State Route 104A
Sterling, NY 13156

**Re: Circle T Sterling, LLC; Martville Mine
13181 Sanford Rd (Tax Map No.: 20.00-1-68.1)
Sterling, NY 13111
(AREA VARIANCE REQUEST)**

Dear Chairman Palmieri and Members of the Town of Sterling ZBA:

Please be advised that the Applicant, Circle T Sterling, LLC, as owners of premises located at 13181 Sanford Rd, Town of Sterling, New York, have retained the services of Costello, Cooney & Fearon, PLLC regarding its application for an area variance from the requirements of Article 10-5(J)(2)(d) of the Town of Sterling Land Use Regulations relative to the setback between mine access roads and residential buildings, to allow for the operation of a sand and gravel mine at the above referenced address. The property is an approximately 82.1-acre parcel located on the east side of Sanford Road. 35.8 acres of the property will be utilized for the mine. The parcel is located in the Town's Agricultural/Residential ("A/R") zoning district.

BACKGROUND AND USE OF PARCEL

As you may be aware, on or about June 23, 2014 Christopher J. Ferlito of Christopher J. Construction LLC ("CJC") applied to the New York State Department of Environmental Conservation ("DEC") for a Mined-Land Reclamation Permit to operate a mine at 13181 Sanford Road, Martville, New York. As noted in the extensive record regarding this matter, this site has historically been zoned for and has been used as a mine since at least 1966.

CJC also submitted an application to the Town of Sterling Planning Board on January 9, 2015 for a Special Use Permit in accordance with the Town of Sterling Land Use Regulations to operate the mine at the above referenced premises. The Town's Land Use Regulations

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specifically allow for Mining and Extraction of Resources in the Town's A/R zoning district, where mining is a permitted use subject to the issuance of a special use permit.

CJC subsequently applied to the Town of Sterling Zoning Board of Appeals for an area variance pursuant to the Town's Land Use Regulation Article 10-5(J)(2)(d) which requires that "access roads [to mines] at all points, including but not limited to the main entrance and exit, shall be at least one thousand (1000) feet from any existing residence or public building." Said application requested variances for two access points to the mine along Sanford Road, a northerly access point and a southerly access point. By resolution dated May 4, 2015, the Zoning Board of Appeals granted the area variance application. *See Exhibit "A"*.

On or about May 4, 2015, the DEC issued a Notice of Complete Application and a Negative Declaration with respect to CJC's mining application. *See Exhibit "B"*. The DEC, acting as lead agency for purposes of reviewing the proposed project under the State Environmental Quality Review Act ("SEQRA"), declared the action a Type 1 action and determined that the proposed mine would not have a significant impact on the environment.

During the application processes with the Town and DEC, CJC submitted a revised Mining Plan Map, dated July 15, 2015 (attached hereto as *Exhibit "C"*), which eliminated the northerly access point to the mine. In light of the change from two access roads to a single access road, the Zoning Board of Appeals voted unanimously to rehear CJC's area variance application for the 1,000-foot setback between the southerly mine access points and residential structures. Following the rehearing of the area variance application, the Zoning Board of Appeals, by resolution dated September 28, 2015, voted to grant the variance, as amended. *See Exhibit "D"*.

On September 8, 2015, the DEC provided CJC with an approved permit authorizing the operation of the "Martville Mine" as well as a "Response to Public Comments on the Martville Mine" to all "Interested Parties." *See Exhibit "E"*.

By resolution dated February 6, 2017, the Town of Sterling Planning Board granted CJC's application for a special use permit to operate a sand and gravel mine at 13181 Sanford Road in the Town of Sterling. *See Exhibit "F"*.

As the Zoning Board is no doubt aware, the land use approvals consisting of the area variance and the special use permit for the mine issued by the Zoning Board of Appeals and the Planning Board, respectively, were challenged in court by way of two separate Article 78 proceedings filed by residents of the Town of Sterling. Although the Town, CJC and the other Respondents were largely successful in defending the claims set forth in the lawsuits, the Appellate Division, Fourth Department determined that due to a procedural issue; i.e., the failure to refer the variance application to the Cayuga County Planning Board pursuant to General Municipal Law Section 239, the Zoning Board's two resolutions granting the area variance for the setback between the mine access points and residential structures were null and void.¹

¹The special use permit was referred to the County Planning Board as required by GML Section 239.

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Notably, the Fourth Department did not hold that the area variance application was improperly granted on the merits, but merely that a procedural step was omitted. Thus, the Fourth Department, remitted the area variance application back to the Zoning Board of Appeals for a new determination on the merits.

Accordingly, the purpose of this correspondence is to renew the application for the area variance in accordance with the determination of the Fourth Department. This correspondence further addresses the State mandated 5-point criteria for area variances pursuant to Town Law §267-b and supplements the completed application form and project information previously submitted into the Record relative to the pending area variance.² Please note that in the intervening months since the Fourth Department's decision, the ownership of the mine and the various mining permits have been transferred from Christopher J. Construction, LLC to Circle T Sterling, LLC. Therefore, this letter hereby amends the previous application to be in the name of Circle T Sterling, LLC, as owner of record and Applicant.

The area variance sought by the Applicant is more fully summarized below.

SUMMARY OF VARIANCE REQUESTED

<u>Variance Requested</u>	<u>Land Use Law Requirement</u>	<u>Proposed By Applicant</u>
Access Road Setback	1000 ft. from any existing residence or public building (Article X, Section 5J Subsection 2.d)	634 ft. to residence located at 13123 Sanford Road (Tax Map ID# 26.00-1-9.212)
		425 ft. to residence located at 13138 Sanford Road (Tax Map ID# 20.00-1-68.2)
		344 ft. to residence located at 13177 Sanford Road (Tax Map ID# 20.00-1-62.211)
		713 ft. to residence located at 13199 Sanford Road (Tax Map ID# 20.00-1-62.12)

AREA VARIANCE INFORMATION

As more particularly demonstrated below and as previously demonstrated in the Record, our client believes that the benefit to the Applicant and to any future owners of the subject property greatly outweighs any perceived detriment to health, safety and welfare of this

²This letter incorporates herein by reference the record before the Zoning Board of Appeals with respect to the previous variance applications and the record before the Planning Board with respect to the special use permit application.

particular area should the requested variance be granted. We therefore ask the Board to consider the following relative to the legal standard applicable to the variance:

I. THERE WILL BE NO UNDESIRABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR ANY DETRIMENT TO NEARBY PROPERTIES CREATED BY THE GRANTING OF THE VARIANCE.

The Applicant's property is located at 13181 Sanford Road in the Town of Sterling's Agricultural/Residential ("A/R") zoning district, where mining is a permitted use subject to the granting of a special use permit. See *George Eastman House, Inc. v. Morgan Management, LLC*, 130 A.D.3d 1552 (4th Dept. 2015) ("The inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood."); *Edwards v. Zoning Board of Appeals of Town of Amherst*, 163 A.D.3d 1511, 1512 (4th Dept. 2018).

As noted above, by resolution dated February 6, 2017, the Town of Sterling Planning Board, by a vote of 4-0, granted the application for a special use permit to operate a sand and gravel mine at the above referenced premises. See **Exhibit "F"**. By doing so, the Planning Board confirmed that the operation of a mine at the Sanford Road location would not result in an undesirable change in the character of the neighborhood or any detriment to nearby properties. In its resolution, the Planning Board made a number of findings in support of its determination, many of which are relevant to the instant area variance request related to the setback between the mine access road and nearby residences, to wit:

- On May 4, 2015 the DEC issued a Notice of Complete Application and a Negative Declaration with respect to CJC's mining application. As indicated in the DEC's Negative Declaration, the DEC, as Lead Agency, **determined that the proposed action will not have a significant effect on the environment**, and that a Draft Environmental Impact Statement will not be required. The DEC also declared the proposed mine to be a "Type 1" Action. In reaching its conclusion regarding no significant effect on the environment, the DEC considered all potential impacts from the Project, including soil, water, **traffic**, noise, dust, air, cultural and visual resources, and fish and wildlife.
- "The Town of Sterling LUR allows mining in the Agricultural/Residential ("A/R") zoning districts of the Town with the issuance of a Special Use Permit. **The subject property is located in the A/R district, and has been historically recognized as a gravel mine for over fifty (50) years.** Future use of this property as a commercial mine that extracts more than one-thousand (1,000) cubic yards of material would be regulated with conditions imposed by the DEC and the Town of Sterling that would protect the general public welfare from any potential harm...The activities of the proposed mine are similar in nature to the agricultural activities that are prevalent throughout the community. **The exhaustive review of environmental concerns** by the DEC provides a strong enforcement basis for oversight by both Town and State

official that will ensure compliance of guidelines established and in turn ensure the safety of the public.”

- **“The Project is not only in a previously existing zoned area that permits mining, but includes a parcel that was historically a mine.** This Project therefore is convenient to the Town of Sterling community as mining operations would not be conducted on a fresh parcel untouched by mining, but on a parcel in an area that has already experienced mining operations. In conjunction with being an allowable operation under zoning law, DEC has identified this Project as one being commonly known including to the Town of Sterling as being once again a possible gravel mine in the future. **In conjunction with the possibility of mining operations resuming in the future, DEC identified during its investigation that Sanford Road was rebuilt in 2014 with the understanding of a possible gravel mine in the near future.”**
- “Adequate evidence has not been presented to the Planning Board that a mine of this size, scope and/or duration, in this location, in the current housing market, would adversely affect the value of the surrounding properties.”
- “The intent of the Town of Sterling LUR is to allow traditional land uses to support the character of the community....**The Planning Board has diligently reviewed every aspect and detail of the subject project, and has considered all of the details and concerns provided by the Town residents during public hearings and in written communications.** The general concern of the Planning Board has been to determine whether the proposed project could proceed without an adverse impact to the environment and surrounding properties. Implementing conditions to control visual and noise impacts with screening and buffering vegetation and enforcement of a 1,000 foot setback regulation between structures and mining activities is one such example. Other examples of these conditions are as follows:
 - **Dust abatement through water surfaces, paved haulage roadway, trees and earth berm for filtering and tarp covered loads exiting the project;....”**
- “Analysis by the Planning Board of the overall area acknowledges that the zoning district adjacent to the subject property is a Hamlet which does not allow mining, and, therefore, does not allow traffic generated from a mining operation to pass through it. **As such, the Planning Board has demanded from the initial review that all traffic must travel south as a deliberate action to uphold the character of the general laws of the Town and be in accordance with the Comprehensive Plan.”**
- “As set forth in detail herein, through regular Planning Board meetings, work sessions, public hearings, a review of the project by all State, Federal and Local agencies with jurisdiction over the Project, an independent traffic study by Creighton Manning, and e-mail and comments from neighbors and residents during a more than two-year

period, the Planning Board has done due diligence in its review of the Project **and has found it to be in compliance with the LUR, the Town's Comprehensive Plan, and all applicable laws and regulations.**"

See Exhibit "F".

The Planning Board also made a number of findings relative to traffic concerns based on a traffic study prepared for the Board by Creighton Manning, LLP (attached hereto as Exhibit "G"), all of which support the granting of the variance:

- "CM's conclusions support the adoption of the project in that Sanford Road is designated as a low volume road that is expected not to change even after the mining project is complete."
- **"The review of traffic volumes revealed that a noticeable increase occurs in the PM hours of operation, but that the increase itself is not significant from a roadway capacity perspective, although the presence of trucks would be more prominent at those times for neighboring residents."**
- "The volume would be further controlled by maximum allowed trucks per hours designated by the Highway supervisor in accordance with the Road Preservation Law."
- "The engineer's review of accident data yielded no discernable accident types or trends for the area, and recommended that centerline striping of Sanford Road could mitigate neighbor concerns which the Town is willing to do."
- "The stop-gap analysis revealed that the average number of gaps is more than sufficient to accommodate the project traffic volumes from the site."
- "The sight distance evaluation found several areas, although not critically limited, were below AASHTO sight distance guideline standards because of accumulated brush at most of the intersections. **Removal of trees and vegetation by the applicant, Town of Sterling and Victory Highway departments, Cayuga County Highway and the State DOT would mitigate this condition and improve all sight distances to be within AASHTO guidelines.**"
- **"The traffic design by CJC, dictated by the Town Planning Board, to mandate that trucks must travel to the south and not northbound on Sandford Road is to assist in safety measures for the residents of the area."**
- "Signs by CJC on site as well as road signs by the Town of Sterling will also be implemented for safety of the traveling public."

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See Exhibit "F".

It should be further noted that the Planning Board imposed numerous conditions when granting the special use permit to mitigate and address any purported or potential concerns associated with traffic which include, in relevant part:

- "CJC shall install traffic control signage on the property adequate in number, size and location."
- **"CJC shall, at all times, keep and maintain the property free of brush that would otherwise impair sight distances."**
- **"CJC shall, at all times, keep the portions of Sanford Road adjacent to the mine free of rocks, sand and all other debris generated by mine activity."**
- "A dust-preventative layer shall be spread on traveled roadways at all operations where required to protect the public and the countryside against windblown sand and dust in accordance with LUR 10-5(J)(2)(g)."
- **"There shall be a single access point for ingress and egress. All other access points to the property shall be gated and shall not be utilized."**
- **"The single ingress/egress road shall be sufficiently asphalt surface treated to eliminate dust and tracking onto Sanford Road."**
- "CJC shall, at all times, be in compliance with all requirements and provisions of Town of Sterling Road Preservation Local Law."
- "Mining operations shall be limited to the following hours: Monday through Friday, 7:00 a.m. to 5:00 p.m.; and Saturday, 8:00 a.m. to 4:00 p.m. for residential deliveries only. No mining operations shall be conducted on Sundays or legally declared holidays."
- **"CJC shall comply with the recommendations contained in CM's November 1, 2016 Traffic Study at "Conclusions," items 3(a), 3(b), and 3(c) regarding improving sight distances."**

See Exhibit "F".

In short, the Planning Board determined that the character of the area would not be harmed by the proposal.³

³As the Zoning Board is aware, the lawsuit challenging the Planning Board's approval of the special use permit was dismissed in its entirety by the Cayuga County Supreme Court.

Moreover, as the Board is no doubt aware, the property has historically been used as a mine since approximately 1966. As noted in correspondence to this Board dated April 24, 2015 from Attorney John Klucsik, both the Town of Sterling and Cayuga County have historically utilized materials mined from the site and materials from the site were used to build an addition to the Town Hall in 2011. *See Exhibit "H"*. Likewise, the northerly access point (which has been eliminated by the Applicant) was historically used as an access point to the mine property and the southerly access point (the access subject to this variance) was historically used for access to a small Christmas tree farm adjacent to the mine property. In other words, the character of the Sanford Road area has long included the existence of an operating mine, including the access point contemplated by this variance application.

Based upon all of these observations and the submitted materials, it is reasonable for the Zoning Board to conclude that there will be no undesirable change to the character of the neighborhood and no detriment to nearby properties should the variance be granted. *Matter of North Country Citizens for Responsible Growth, Inc. v. Town of Potsdam Planning Board et al.*, 39 A.D.3d 1098 (3d Dept. 2007); *Matter of Daneri v. Zoning Bd. of Appeals*, 98 A.D.3d 508, 510 (2d Dept. 2012); *Matter of Suffern v. Zoning Bd. of Appeals of Town of Greenville*, 17 A.D.3d 373 (2d Dept. 2005).

II. THE BENEFIT SOUGHT CANNOT BE ACHIEVED BY ANOTHER METHOD THAT IS FEASIBLE TO THE OWNER OF THE SUBJECT PREMISES.

In this particular instance, the benefit sought to be achieved by the Applicant is the operation of a sand and gravel mine in a zoning district wherein mining is permitted and which use has been authorized by the Town of Sterling Planning Board through the issuance of a special use permit by resolution dated February 6, 2017 and by the New York State Department of Environmental Conservation through the issuance of a mining permit on September 8, 2015. Furthermore, the benefit to the Applicant in this matter also consists of the location and use of the existing southerly access point to the mine. As noted in correspondence to this Board from Attorney John Klucsik, dated April 24, 2015, which previously addressed the standards for the granting of the area variance (which at that time consisted of the northerly and southerly access roads), the Applicant considered other options for the location of the quarry access points. However, as noted by Attorney Klucsik:

“Each alternative would bring the quarry access roads closer to a greater number of residential buildings than does the proposed access plan. Christopher J. Construction, LLC went so far as to discuss with property owners north of the site, an easement agreement that would put the quarry entrance significantly farther north on Sanford Road. Even this alternative would put the quarry access point closer to a greater number of residential buildings.”

See Exhibit "H". In other words, the alternatives to the current proposal consist of an access road that would be closer to residential properties and result in the need for a greater variance than the one presently requested.

Moreover, through the application process with the DEC for the mining permit and with the Town for the various land use approvals, the Applicant has always sought to accommodate and address concerns of the Town, residents and neighbors to ensure that any potential and/or purported impacts are minimal and mitigated. In this regard, the Record clearly demonstrates that the Applicant completely eliminated the northerly access point to the subject parcel while retaining the southerly road as the sole access point to the property. This change resulted in the Zoning Board of Appeals rehearing the variance and re-granting the Applicant's application by resolution on September 24, 2015. At that time the Board recognized that "the rehearing hasn't presented any changes of impact from a double driveway to a single; **in fact eliminating the north access has decreased the overall number of structures affected.**" See Exhibit "D". Moreover, the Board also made a specific finding that the benefit could not be achieved in another way because the Applicant has "no other access to [the] property." See Exhibit "D"; See *Beekman Delamater Properties, LLC v. Village of Rhineback Zoning Board of Appeals*, 150 A.D.3d 1099 (2d Dept. 2017); *Baker v. Brownlie*, 248 A.D.2d 527 (2d Dept. 1998); *Matter of East Home Program v. Trotta*, 276 A.D.2d 553 (2d Dept. 2000).

III. THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL.

When considered in the context of the area, the established zoning designation, the historic use of the property for mining operations, the fact that the proposed southerly access point has historically been used for access to the property and the extensive conditions and mitigations proposed by the Applicant and contained in the resolution of the Town of Sterling Planning Board granting the special use permit, the variance sought by the Applicant under the present circumstances is not substantial.

Moreover, as noted herein, the initial access road variance granted by the Zoning Board in April of 2015 was for the original proposal containing two access points for the mine: the northerly access point and the southerly access point. The application was subsequently revised, eliminating the northerly access point and any required variances related thereto. In addition to this mitigation, as discussed above, the Applicant investigated alternative access points to the mine but determined that each alternative resulted in a greater number of properties being closer to the access roads. Thus, the selection of the single southerly access point was determined to be the most conducive, least impactful and insubstantial location for access to the mine with respect to the setback requirements. See *Matter of O'Keefe v. Donovan*, 199 A.D.2d 681 (3d Dept. 1993); *Baker v. Brownlie*, 248 A.D.2d 527 (2d Dept. 1998); *Matter of North Country Citizens for Responsible Growth, Inc. v. Town of Potsdam Planning Board et al.*, 39 A.D.3d 1098 (3d Dept. 2007); *Korean Evangelical Church of Long Island v. Bd. of Appeals of the Village of Westbury*, N.Y.L.J. Feb. 28, 1996, p. 31, col. 2 (Sup. Ct. Nassau Co. 1996).

Furthermore, the extensive conditions related to the installation of traffic controls; maintaining sight distances; keeping Sanford Road clear of debris; dust prevention techniques; the requirement of a single access point and that all other access points to the mine be gated; and limited hours of operation which were placed on the mine operation by the Planning Board as part of the special permit approval relative to traffic and access to the property, further mitigate

any potential or purported concerns; rendering the variance insubstantial under the circumstances.

IV. THERE WILL BE NO ADVERSE EFFECTS OR IMPACTS ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS OF THE NEIGHBORHOOD.

As the extensive and voluminous record of this matter demonstrates, there is no likelihood of any physical or environmental adverse effects as a result of the requested variance for the setback for the single access road. *See Cacsire v. City of White Plains Zoning Bd. of Appeals*, 87 A.D.3d 1135 (2d Dept. 2011); *Matter of North Country Citizens for Responsible Growth, Inc. v. Town of Potsdam Planning Board et al.*, 39 A.D.3d 1098 (3d Dept. 2007).

Notably, the DEC previously conducted a coordinated SEQRA review for the proposed mine and declared itself as lead agency, declared the project to be a Type I⁴ action, and determined that the proposed project would not have a significant impact on the environment. Accordingly, the DEC issued a Negative Declaration on May 4, 2015 and made extensive findings which included, in relevant part:

Traffic: “Based on the information provided by the applicant through the Full and Mining Environmental Assessment Forms (EAF’s), truck traffic generated by the operation of the mine will not be a significant impact on local roads. An estimated average of 5 trucks per hour are expected during normal operations, with an estimated 10 trucks per hour expected at maximum processing rates. On March 12, 2015 the Department received a letter from the Town of Sterling Highway Department stating Sanford Road was rebuilt in 2014, upgraded to meet or exceed town specifications, and that there is no concern regarding road use associated with mining operations at the present time. The applicant will be required to obtain a Road Use Permit from the Town of Sterling Highway Department.”

“The applicant reports that the sight distance from the south haul road is excellent in both directions along Sanford Road. The view to the north from the north haul road is limited by a steep hill. For this reason, the north haul road will not be used by traffic exiting the mine. Loaded trucks will only travel south on Sanford Road. Loaded trucks will then travel the short distance westward to State Route 38 on County Route 112 (Pople Road). Loads will then travel to State Route 38 to the north and south or NYS Route 104 to the east and west. These routes have been discussed with the Town of Sterling Highway Superintendent, and the vehicles and loads will be acceptable on Sanford Road for the short distance proposed. County Route 112 and the New York State Highways are designed for heavy commercial traffic. The vehicles to be used will include tandem dump trucks, triaxle dump trucks and eighteen-wheel tractor/dump trailer combination vehicles.

⁴The Type I designation and prior DEC review ensured the highest standard of environmental analysis directed by the DEC’s regulations.

The vehicles will not be loaded with weights exceeding legal limits for each individual vehicle. Loads will not extend above side boards, and will be properly covered. The intersections of the mine haulage ways with Sanford Road will be watered and swept as appropriate to control mud and dust. Proper traffic control and signage will be put in place prior to and during road cleaning activities.”

Noise: “Overall, there will be minimal impacts from noise associated with the mining operation. Noise impacts will be mitigated by observing 7 a.m. to 5 p.m. operating hours during weekdays and 8 a.m. to 4 p.m. on Saturdays, with no operation on Sundays, New Year’s Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day or Christmas Day. Mining operations will be seasonal in nature and will principally be conducted April through November.”

Dust: “Any dust generated from equipment and truck movement will be controlled by the addition of water as necessary. The haul road will be graded, watered or treated with approved dust palliatives as necessary to control dust. A water truck will be filled at the well shown on the Mining Plan Map and used to spray the mine floor and internal roadways. The intersections of the mine haul roads will be water and swept as appropriate to control mud and dust.”

Land Use Planning & Zoning: “As it relates to other land use impacts, the Department finds that significant, long term adverse impacts are unlikely should this mine be developed as proposed and mining activities proceed under a valid mining permit.”

See Exhibit “B”.

It should also be noted that subsequent to the DEC’s Negative Declaration, the Applicant eliminated the northerly access point, resulting in only a single access point for the property; further reducing the extent of the variance and any purported or perceived impacts associated therewith. As noted by ZBA Member Palmieri at the Board’s September 24, 2015 meeting where it reheard the application, “the hearing hasn’t presented any changes of impact from a double driveway to a single; in fact eliminating the north access has decreased the overall number of structures affected.” **See Exhibit “D”.**

Indeed, the Zoning Board already made a finding that the instant variance would not have an adverse impact on the environment, recognizing that “the DEC was designated as Lead Agency for the SEQR review and their documentation shows no adverse effects.”⁵ **See Exhibit “D”.** Significantly, in the lawsuit challenging the ZBA’s granting of this variance, the Petitioners’ cause of action challenging the DEC’s environmental review of the mining operation

⁵It should also be noted that in its February 6, 2017 resolution granting the special use permit, the Planning Board resolved “that the Town of Sterling Planning Board hereby recognizes the DEC’s lead agency status for purposes of review under SEQRA, and does hereby adopt the DEC’s May 4, 2015 “Negative Declaration” with respect to CJC’s application, as well as its determination that the proposed action is a “Type 1” Action and will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be required.” **See Exhibit “F”.**

was dismissed. In this regard, in its Memorandum and Order, the Appellate Division, Fourth Department held:

“[W]e conclude that the record established that the DEC took the requisite hard look and provided a reasoned elaboration of the basis for its determination regarding the potential impacts of the project on traffic, noise, water, agricultural land requirements and wildlife. We thus further conclude that the DEC complied with the requirement of SEQRA in issuing the negative declaration...that the designation as a Type I action does not, per se, necessitate the filing of an environmental impact statement...and that no such statement was...required here.”

See Exhibit “I”.

Moreover, as part of its review of the special use permit application the Planning Board commissioned a traffic study to evaluate traffic concerns and made the following relevant findings as a result:

- “The sight distance evaluation found several areas, although not critically limited, were below AASHTO sight distance guideline standards because of accumulated brush at most of the intersections. Removal of trees and vegetation by the applicant, Town of Sterling and Victory Highway departments, Cayuga County Highway and the State DOT would mitigate this condition and improve all sight distances to be within AASHTO guidelines.”
- “The traffic design by CJC, dictated by the Town Planning Board, to mandate that trucks must travel to the south and not northbound on Sandford Road is to assist in safety measures for the residents of the area.”
- “Signs by CJC on site as well as road signs by the Town of Sterling will also be implemented for safety of the traveling public.”

See Exhibit “F”.

The Planning Board also imposed *19 separate conditions* when granting the special use permit all of which were designed to mitigate and protect the neighborhood and the environment from any potential impacts associated with the proposal; including with respect to the single access point to the property.

Based on the foregoing, and the extensive environmental record developed with respect to this project, it is anticipated that there will be no physical or environmental impacts to the neighborhood with the granting of this request. Accordingly, it is respectfully requested that the Zoning Board re-adopt and re-confirm the Negative Declaration issued by the Department of Environmental Conservation on May 4, 2015.

Hon. Richard Palmieri, Chairman and
Members of the Town of Sterling Zoning Board of Appeals
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V. THE ALLEGED DIFFICULTY WAS NOT SELF-CREATED BUT IS A FUNCTION OF THE APPLICATION OF THE SETBACK REQUIREMENT FOR MINE ACCESS ROADS IN THE TOWN'S LAND USE REGULATIONS.

As this Board is aware, the subject property has been utilized as a mine since as early as 1966. In this regard, the previously proposed access points to the mine (the north and south entrances) had historically been used to access the property: the north access point (now eliminated) was historically used as a point of entry and exit for the mine and the southerly access point was historically used as access to a small Christmas tree farm. Under the present circumstances the need for the requested variances is a function of the application of the setback requirements in the Town's land use regulations to these long standing and existing access points. As noted in the correspondence dated April 24, 2015, submitted by Attorney John Klucsik in support of the variance (for the then 2 driveway proposal) the Town's Land Use Regulations "would pose the same problem with respect to access location anywhere on the site." See **Exhibit "H"**. Indeed, ZBA Member Dates stated that he doubted "that any property would be able to comply with these setback restrictions and is essentially why" the Applicant is seeking relief. See **Exhibit "D"**. In fact, as noted above, the Applicant considered other options for the location of access points, but those alternatives would result in the need for a greater variance than the one presently being requested.

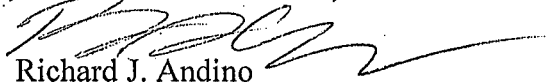
In any event, even if the Board should determine that the alleged difficulty was self-created, when balanced with the factors addressed above, said factor is not dispositive and the variances should be granted for the reasons articulated herein.

SUMMARY

Based on the extensive record before the Board, it is evident that the benefit to the Applicant from the granting of the variance far outweighs any potential detriment to the health, safety and welfare of the Neighborhood or the community. For all of the above reasons, the Applicant respectfully requests that the area variances be granted in this matter.

Very truly yours,

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cc: Kevin Cox, Esq., Zoning Board of Appeals Attorney (w/enclosure)