

****TOWN OF GRAND ISLAND**
ZONING BOARD OF APPEALS**

**MINUTES
August 3, 2023**

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TOWN CLERK
GRAND ISLAND, N.Y.

MEMBERS PRESENT: Chairman Bob Mesmer, Betty Harris, John Braddell, Dan Drexelius and Tim Phillips

MEMBERS ABSENT: None

OTHERS PRESENT: Nick Cultrara, Code Enforcement Officer
Ronald Milks, Code Enforcement Officer
Kim Kinney, Building and Zoning Clerk

Chairperson, Robert Mesmer opened the meeting at 7:00 p.m. and introduced the members of the Zoning Board of Appeals and explained the process.

NEW BUSINESS:

1) 3040 Staley Road – David Santillo

This property is zoned R1A. The Applicant is requesting to construct a 40' x 40' addition to an existing 40' x 60' detached garage that was built in 2018. The applicant currently has 4224 sq. ft. of garage space on this 10 acre lot. Town Code §407-142.C. Allows for 1700 sq. ft. of garage space. Because the applicant has had several approved variances, this variance would be only for the addition of 1600 sq. ft. of garage space.

Appearing before the Board was David Santillo. He explained that he has a large car collection, and some cars are double stacked on lifts. He would like more storage for the cars and trailers. He is an electrician by trade. He does not run a business from his house, cars are his hobby.

A **motion** was made by Phillips / Harris to close the Public Hearing. All in favor.

A **motion** was made by Phillips / Drexelius to **GRANT** the request for a 1600 sq. ft. area variance for the addition of a 40' x 40' detached garage to an existing 40' x 60' garage at 3040 Staley Road.

Roll Call:

Ayes: Braddell, Harris, Mesmer, Drexelius, Phillips

Noes: None

Carried

Rationale:

1. This variance will not have an adverse effect or impact on the environment or physical characteristics in the neighborhood.
2. The granting of this variance is a solution to car storage and does not cause a detriment to the character of the neighborhood.
3. There will be no commercial use at this location.

2) Ransom Road- Ransom Road LLC

This property is zoned B3. The applicant is proposing a zoning reclassification for a 12.9 acre B3 parcel to be rezoned to a mixed-use PDD. Town Code §407-120.C(3) A PDD shall be comprised of at least 25 acres. Public roads shall be permitted to divide such acreage provided that at least one acre of contiguous land area exists in each portion. The applicant is requesting a variance for less than the required acreage for a PDD. If granted the applicant will then put in a rezoning request with the Town Board for rezoning to a PDD.

Appearing before the Board was Attorney Sean Hopkins representing 1441 Ransom Road LLC. Mr. Hopkins gave a presentation of the proposed project. He stated they would not only require the variance but would also require Town Board approval on the rezoning and site plan approval. Mr. Hopkins also submitted a traffic study and a wetland delineation report. Board member Phillips addressed the room and stated that this variance request was strictly for the acreage requirement. This was not the place to express other concerns such as traffic, noise or environmental issues. If anyone would like to speak to the variance request of less acreage than required, they were welcome to speak. There were several speakers and over 25 letters sent to the Board opposing the project.

A **motion** was made by Harris / Drexelius to close the public hearing. All in favor.

A **motion** was made by Drexelius / Harris to DENY the request for 12.1 acres less than required acreage variance for a Planned Development District.

Roll Call:

Ayes: Braddell, Harris, Mesmer, Drexelius, Phillips

Noes: None

Carried

Rationale:

1. The Board determined that the density of this project on less than the required acreage may cause an undesirable change in the character of the neighborhood.

2. The Board stated that the benefit sought by the applicant could be achieved in another way such as rezoning residential.
3. The variance request was substantial at over 50%.
4. The variance request could have a substantial environmental impact on the neighborhood.
5. The alleged difficulty was self-created. The property could be used for other purposes.

3) East River Road – 12.15-2-17 Harper

This property is zoned R1B. The applicant is proposing to construct a new single-family dwelling on two combined lots on the shoreline. To meet flood plain requirements, the applicant would like to construct a retaining wall on the east side of the lot to hold the amount of fill necessary to build out of the flood plain. There will also be a 3 ft. tall fence on top of the wall. The variances required here are for the height of the retaining wall and fence in the front yard setback and the height of the wall and fence on a shoreline lot. Town Code §407-155.D. No fence or wall, other than a necessary retaining wall, over three feet in height shall extend into the required minimum front yard. The retaining wall with fence is proposed at maximum 6 ft. in the required front yard making a 3 ft. height variance necessary. Town Code 407-18.C. (4) Fences in rear yards of shoreline lots shall not be opaque and shall not exceed four feet in height. The wall with fence is proposed at 7 ft. tall, making a 3 ft. height variance for the fence on a shoreline lot necessary.

Appearing before the Board was Contractor Jeff Blum representing Mr. Harper. Mr. Blum described the project. He stated that the grade of the lot on the west side would be gradual and would not create a detriment to the property on the west side. On the east side of the lot, there would not be a major impact to sight lines because the lot is lined with 30 ft. tall arborvitae that are very dense. Mr. Blum also stated that this filling of the lot was a reasonable way to elevate the house out of the flood plain and would not have a significant impact on the physical or environmental conditions in the neighborhood.

Speakers; Ron Cooke, Robert Weaver, Jeff Morgan, Greg Barker, Jennifer May, all oppose the variance request.

Speakers agreed that this variance request would most certainly cause a detriment to their properties due to flooding and rising river levels. It was also stated that this action of filling in the parcel with fill would set precedent for future projects on the shoreline. The wall would affect the quality of light and air flow for the direct neighbor to the east being only feet from the proposed wall and a wall of 30 ft. shrubs.

Chairman Mesmer stated that in his opinion this request has failed to meet any of the criteria for granting a variance.

A **motion** was made by Braddell / Phillips to close the public hearing. All in favor.

A **motion** was made by Phillips / Drexelius to **DENY** the request for any height variances for a fence and retaining wall for the lot west of 4901 East River with the parcel identified as SBL 12.15-2-17

Roll Call:

Ayes: Harris, Braddell, Drexelius, Mesmer, Phillips

Noes: None

Carried

Rationale:

1. The Board determined that the variance request would cause an undesirable change in the character of the neighborhood by filling in and changing the natural grade of the land and waterfront. This would also create a precedent for other waterfront properties in the flood plain.
2. The benefit sought by the applicant can be achieved in some other matter such as building the home to flood plain standards instead of raising the elevation of the lot.
3. The variance amount was substantial at 50% or more.
4. The Board concluded that the variance request could have an adverse impact on the physical environmental conditions of the neighborhood and possible flooding. The Board was also concerned with setting a negative precedent for construction on the shoreline.
5. The alleged difficulty is self-created.

4) 1444 East Park Road – Justin Caldwell

This property is zoned R1E. The applicant is requesting to construct a 22' x 22' x 14' detached garage in the required side and rear yard setbacks. Town Code § 407-142.A. The setback distance for an accessory storage structure from the rear and side yard lot lines shall be equal to or greater than the height of the accessory storage structure. The proposed structure is 14 ft. tall making the required setback from side and rear yard lot line 14 ft.. The applicant is proposing a 6 ft. side and rear yard setback making an 8 ft. variance necessary for both the side and rear yard setback.

Appearing before the Board was Justin Caldwell. He explained his proposal for a garage as replacing a deteriorated smaller garage and constructing the new in about the same location as the old building. The new building would be a foot farther from the neighboring lot than the original. Mr. Caldwell said he would like the garage for more storage, he currently has only half a basement. Board member Drexelius mentioned the low hanging national grid wires and was concerned for the height of the building and closeness to the electrical wires.

A **motion** was made by Harris / Drexelius to close the public hearing. All in favor.

A **motion** was made by Phillips / Drexelius to **GRANT** the request for an 8 ft. side yard setback variance from the east lot line for the location of a 22' x 22' x 14' detached garage at 1444 East Park Road on the condition it meets National Grid safety standards.

Roll Call:

Ayes: Harris, Braddell, Mesmer, Drexelius, Phillips

Noes: None

Carried

A **motion** was made by Drexelius / Phillips to **GRANT** the request for a 8 ft. rear yard setback variance for the location of a detached garage at 1444 East Park Road.

Roll Call:

Ayes: Braddell, Harris, Mesmer, Drexelius, Phillips

Noes: None

Carried

Rationale:

1. The Board determined this variance request would not create a detriment or undesirable changes to the neighborhood. There are similar structures throughout the neighborhood.
2. The variance request is a solution to storage hardships on these smaller lots with no basements.
3. The new building will be farther away from neighboring property than the previous structure and has unbuildable state land behind his property.

5) 2195 Long Road – Darrell Kinmartin

This property is zoned R1D. The applicant is requesting to locate a second driveway along the **east** lot line. Town Code § 407-129A(6) Notwithstanding any other requirement of this code, driveways shall not be located nor existing driveways expanded to a distance less than three feet from the property line, so as to provide adequate room for drainage and snow removal. The applicant is requesting a zero ft. setback, making a 3 ft. setback variance necessary.

Appearing before the Board was Darrell Kinmartin who resides at 2195 Long Road. Mr. Kinmartin said he was constructing a driveway to access the rear yard. He didn't realize he couldn't use all of lot. He thought he had plenty of room on his side of the fence. Mr. Kinmartin stated that there was not enough land on the other side of the house. He presented a letter from a neighbor who had no objections. Chairman Mesmer said the Board has never given the whole setback allowance. Member Drexelius stated only once that he remembered with very unique circumstances.

Speakers: Kathline Becker, Larrine Toth, both oppose variance request.

Speaker: Code Enforcement Officer Ron Milks. He stated to the Board that the applicant only had 10 ft. on the east side and the driveway was already installed without Erie County Highway Permits or permission from the Building Department. There was also an open complaint that the applicant was running a business out of that residential address.

A **motion** was made by Braddell / Drexelius to close public hearing. All in favor.

A **motion** was made by Drexelius / Harris to **DENY** the request for a 3 ft. side yard setback variance from the east lot line for the location of a second driveway located up to the side lot line at 2195 Long Road.

Roll Call:

Ayes: Harris, Braddell, Drexelius, Mesmer, Phillips

Noes: None

Carried

Rationale:

1. The granting of this variance would cause a detriment to the neighboring property due to rain run-off, snow removal, dust and traffic.
2. The applicant has open violations against him that have not been rectified.
3. The applicant's hardship has been self-created. They did not acquire the proper permits for the second driveway.

6) 5000 East River Road – Keith Woods

This property is zoned R1C. The applicant is requesting to locate a 12' x 18' x 11' shed with a 8 ft. open overhang within the required side yard setback. This would also be the second accessory structure. Town Code § 407-142.A. All detached accessory uses and structures shall observe the applicable front and side yard requirements applicable to principal buildings in the district. The rear yard requirements for all detached accessory uses and structures shall be the same as the applicable side yard requirements for principal buildings in the district. The applicant is proposing to locate the shed 8 ft. from the southeast lot line, making a 4 ft. side yard setback variance necessary. The variance for a third accessory structure is no longer needed.

There was no representative there for this application.

A **motion** was made by Harris / Braddell to **TABLE** the request for a 4 ft. side yard setback variance from the south lot line for the location of a 16' x 12' detached garage with an 8 ft. overhang at 5000 East River Road.

Roll Call:

Ayes: Harris, Braddell, Drexelius, Mesmer, Phillips

Noes: None

Carried

7) 64 Flanigen Lane – Wendell Warren Isom

This property is zoned R1D. The applicant is requesting to locate a 24' x 20' x 12' detached garage in the required side and rear yard setback. Town Code § 407-142.A. The setback distance for an accessory storage structure from the rear and side yard lot lines shall be equal to or greater than the height of the accessory storage structure. The applicant is requesting to locate the shed 10 ft. from both the side and rear lot lines, making a 2 ft. side yard and a 2 ft. rear yard setback variance necessary.

Appearing before the Board was Wendell Isom. Mr. Isom showed the Board photos of a kit car he built in his garage as a hobby. He also showed photos of his property and described where he would like to locate a second detached garage to work on his projects. There will be no driveway to the garage, it is for storage and a workshop.

A **motion** was made by Phillips / Drexelius to close the public hearing. All in favor.

A **motion** was made by Phillips / Drexelius to **GRANT** the request for a 2 ft. side yard setback variance from the south lot line for the location of a 24' x 20' x 12' detached garage at 64 Flanigen Lane not to be located in the private drainage easement

Roll Call:

Ayes: Braddell, Drexelius, Phillips, Mesmer, Harris

Noes: None

Carried

Rationale:

1. This variance request would not cause a detriment to neighboring properties.
2. The request would allow for extra storage for the homeowner without creating a negative impact on the character of the neighborhood.

OLD BUSINESS

1) 3073 Whitehaven Road – Michael Fachko

This property is zoned R1A. The applicant is requesting to construct a 30' x 40' x 18' detached garage in the required front yard of a corner lot. Town

Code §407-19.A.(2) Side yard rule for corner lots. On corner lots, all structures shall be no closer to the right-of-way than the minimum front yard setback of the adjacent lots. The required front yard in R1A is 50 ft. the proposed garage would be 15 ft. from Second Street making a 35 ft. front yard setback variance necessary. The public hearing was closed.

Appearing before the Board was Michael Fachko. He presented the Board with a revised plan for a detached garage. The new plan was to demolish the old shed shown on the survey, leave the existing detached garage and construct a second 40' x 40' garage in the location of the old shed. This new structure would not require a setback variance but would require an area variance for over the allowed garage space.

A **motion** was made by Drexelius / Braddell to **GRANT** the request for a 275 sq. ft. area variance for a new 40' x 40' detached garage in the location of the old shed shown on the survey for 3073 Whitehaven Road.

Roll Call:

Ayes: Harris, Braddell, Phillips, Mesmer, Drexelius,

Noes: None

Carried

Rationale:

1. This variance request will not produce an undesirable change in the character of the neighborhood.
2. The amended request is a reasonable and compatible use of the residential property for current storage needs with a lesser impact on the neighborhood.

2) 175 Regency – David Loos.

This property is zoned R1D. The applicant is requesting to construct a 16' x 36' attached garage addition. Currently there is 440 sq. ft. of garage space. With the proposed addition of 576 sq. ft. the total garage space will be 1016 sq. ft. Town Code §407-23.A. Private attached garage or storage structure with outside building dimensions not to exceed 900 sq. ft. and not to exceed a maximum of 20% of the rear yard with impervious surfaces, making a 116 sq. ft. area variance for garage space necessary. Also, Town Code 407 Attachment I Schedule I **required side yard in a R1D is 10 ft.** The existing south side yard is 18 ft., with the proposed 16 ft. garage, the side yard setback would be 2 ft. making an 8 ft. side yard setback variance necessary. The public hearing was left open.

Appearing before the Board was David Loos. Mr. Loos has presented the Board with an amended application. Mr. Loos is proposing a detached carport that will remain open on all sides to be located 6 ft. from the south lot line.

A motion was made by Harris / Phillips to close the public hearing. All in favor.

A motion was made by Drexelius / Braddell to **GRANT** the request for a 4 ft. side yard setback variance from the south lot line for the location of an open carport at 175 Regency.

Roll Call:

Ayes: Harris, Braddell, Phillips, Mesmer, Drexelius

Noes: None

Carried

Rationale:

1. This amended variance request will have less impact on the neighboring property.
2. The carport being open will not be a detriment to the neighboring properties and sight lines.
3. The requested variance request was not substantial.

APPROVE MINUTES:

A **motion** was made by Drexelius / Harris to Approve the July 6, 2023 ZBA Minutes as written.

Roll Call:

Ayes: Mesmer, Harris, Braddell, Drexelius, Phillips

Noes: None

Carried

OTHER MINUTES AVAILABLE FOR REVIEW

Board of Architectural review –March 21, 2023

Planning Board Agenda –May 8, 2023

Planning Board Minutes – , 2023

Town Board Agenda – Regular Meeting #8, May 1, 2023, Regular Meeting # 9, May 15, 2023

Town Board Minutes – Regular Meeting #6, April 3, 2023, Regular Meeting # 7, April 17, 2023

A **motion** was made by Harris / Drexelius to adjourn the meeting at 8:51 p.m. Minutes prepared by Rhonda Tollner, Zoning Clerk. The meeting was conducted via Zoom and may be viewed on the town You Tube link.