

Town of Wawayanda ZONING BOARD OF APPEALS
January 14, 2016 / 7:00 P.M.

Members Present: **Richard Onorati, Sr. Chairman**
Bruce Lewis
Jeffrey Soons
Raymond Spiak

Members Absent:
Daniel Post

Consultant Present:
David Bavoso, Esq.

Recording Secretary:
Patricia Battiato

The January 14, 2016 Town of Wawayanda Zoning Board of Appeals meeting was called to order by Chairman Richard Onorati Sr., at 7:00 P.M. Chairman Onorati welcomed Jeffrey Soons as the board's newest regular member for the vacant position on the board.

I. PUBLIC HEARING

Ferrara / SBL# 12-1-111 & 112 / SR-Suburban Residential Zone / Greeves Road

Applicant is applying for an area variance of 195 Schedule of Zoning District Regulations for less than the required lot area for each lot.

The Certified Return Receipts were collected and recorded. The Public Hearing notice was read as it appeared in the Times Herald Record.

Chairman Onorati asked who was presenting.

Mr. Robert Ferrara approached the board and stated his name for the record and Chairman Richard Onorati asked what his request was and why.

Mr. Ferrara explained that his request is to obtain a variance to move the property line over. My driveway is currently on the other lot and every time I try to sell the two lots, I am having an issue because the driveway is partially

in the next lot. There is an easement to that driveway, and I am finding it hard to sell because it infringes that second lot.

Chairman Onorati asked Mr. Ferrara to address the area variance criteria.

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance.

Mr. Ferrara replied, "No, I don't feel so, but was approached by a neighbor (that's) here".

- Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

Mr. Ferrara replied, "The only method would be to move the property line which I am trying to do".

- Whether the requested variance is substantial.

Mr. Ferrara replied, "Not substantial"

- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Mr. Ferrara replied, "Will not have an adverse effect or impact in the physical or environmental conditions for the neighborhood or district"

- Whether the alleged difficulty was self-created:

Mr. Ferrara replied, "No".

Chairman Onorati said to Mr. Ferrara, that you can look at it this way, when you bought the property you had an awareness of what you were buying, correct?

Mr. Ferrara, replied, "Yes"

Chairman Onorati said, "So you knew what you were buying. You didn't know down the road that it was going to be more difficult to sell".

Mr. Ferrara said, of course, I had no idea or I never would have bought it.

Chairman Onorati said to Mr. Ferrara that you knew what you were buying because it had the easement on the driveway.

Mr. Ferrara said that all he did when he first purchased it; he came into the town hall before he bought it and verified if it was a buildable lot.

Chairman Onorati said that it is a buildable lot; our code says that any house built in a certain time frame (and I believe your house was built under the 1969 code) you would refer to that code. So under the 1969 code it is buildable. A couple of things have created a problem. You have that lot; yes you can build on that lot as it is right now, the problem is by downsizing it would not have that grandfathering anymore. So you have to go buy the new code today (if you change it).

Attorney David Bavoso said, that basically what the Chairman is saying is that, at the time the lots were created, they may have been conforming. The reason they are still buildable now is because of the fact the code was different at the time when they were created. When you end up trying to make a change, you subject yourself to the current zoning rather than the older zoning, and I think one of the issues that the board is wrestling with is that, just one quick question; this has central water but not sewer right?

Mr. Ferrara replied yes.

Attorney Bavoso continued, so there is a septic system on the lot and there would be on the new lot.

Mr. Ferrara said yes.

Attorney Bavoso said even if that's the case the minimum acreage now for lot area is one acre. You are going from a lot that is about half an acre to one that is about .42 plus or minus acres. It tends to be a general rule that is you have a non-conforming lot; the state tends to frown on making it even more non-conforming than it already was. So the reason why they go through the criteria is because they want to hear the hardship that is creating and how it's being solved, and that it can't be solved any other way. Because, while one lot is getting closer to conforming, you're making one already too small, even smaller. That is what's creating the difficulty for the board.

Chairman Onorati asked Mr. Ferrara is he understood what the attorney was explaining, and Mr. Ferrara said yes.

Chairman Onorati said that the other thing is a report from the Building Inspector. It is my understanding that a perc test was done for a potential buyer, correct?

Mr. Ferrara replied, yes.

Chairman Onorati said, and it did not perc and the person backed out of the deal correct?

Mr. Ferrara yes, but he perked it in the wrong area though.

Chairman Onorati said that another thing too, where the house is the perc test and where the septic field, and your surveyor can probably tell you this, is its going to have to be where your septic field is going to be (for the perc test).

Mr. Ferrara said yes.

Chairman Onorati said you did another perc test on the broken ground where he first perc test failed, correct?

Mr. Ferrara said no.

Chairman Onorati asked if another perc test was done.

Mr. Ferrara replied, no.

Chairman Onorati said that he was led to believe that was the case; there was another perc test that was done since the first one.

Mr. Ferrara said no.

Chairman Onorati asked what he was doing regarding the perc tests.

Mr. Ferrara explained that the builder just came in and covered it with hay temporarily because the ground was freezing and he is waiting for me to get through this process.

Chairman Onorati said that you can't do it in the same place.

Mr. Ferrara said no, he's not, he's moving it out closer to the road where everybody else's septic is, and the other guy had it way too far back.

Chairman Onorati said that he has looked at this and looked at this and one of the criteria, "whether the benefit sought by the applicant can be achieved by some feasible method other than a variance? Is there any other feasible avenue you can go to?"

Mr. Ferrara said it's too costly, and I would have to dig up the entire driveway.

Chairman Onorati said that his understanding (from the Building Inspector) is that the neighbor would like to buy half of that lot.

Mr. Ferrara said we talked about it yes, I was pretty much Ok with it, but my Realtor, I'm in contract with someone, so I can't legally back out.

Chairman Onorati said that he can sympathize with you. I don't really care about the contract. I care about us (the board) abiding by the criteria that was set down to us, that's this board's responsibility and that's an avenue that's feasible. Chairman Onorati asked the board if they had any questions.

Board member Raymond Spiak said that regardless of what happens, he still has to go to the Planning Board for site plan, pass septic, right for the lot line change?

Attorney Bavoso said yes, it would have to go back before the Planning board.

Board member Spiak asked if you keep it the way it was, it would meet the criteria, the fact that he wants a lot line change is what's changing.

Chairman Onorati said that what was happening is, even now with the easement if he could sell the house, he could sell the house, the easement is keeping him from selling the house, correct? That's the problem.

Mr. Ferrara said that was correct.

Board member Spiak said the easement wouldn't keep him from developing the lot.

Chairman Onorati replied, no, if he wants to, what he's caught in is betwixt and between, he can't sell the house because of the easement. He wants to get rid of the easement, move it over, and do a lot line change so

The driveway would be completely on his property. But what it does is open up a can of worms regarding other issues.

Board Member Jeffrey Soons said I take it there's no garage structure on the existing building (looking at a picture that was previously provided).

Mr. Ferrara said yes, through the side.

Chairman Onorati said that was part of the problem, the only thing he can turn into there is a motorcycle, Mr. Ferrara said, correct.

Board Member Bruce Lewis asked why you couldn't put the doors in the front.

Mr. Ferrara said I would, but you are talking about a \$40,000 to \$50,000 project, to dig up the walkway. If there is no other choice, I have to do it, it can be done, it's just going to be very costly.

Chairman Onorati opened the Public Hearing by asking for any questions, comments or concerns.

Mr. Robert Truex, 266 Greeves Road approached the board and stated his name for the record. Mr. Ferrara read his comments in to the record:

"Good Evening Ladies & Gentlemen,

My name is Robert Turex and I own 266 Greeves Road, Section 12, Block 1, Lot 26.6 next to the lot in question. I am here for the Public Hearing for the Robert Ferrara application for an area variance to allow for less than the required lot area.

I know Mr. Ferrara has his home and lot on the market, with the driveway on the other lot with an easement. Which he knew when he purchased his house, so he bought the adjoining lot so we wouldn't have a party driveway if the adjoining lot was sold.

With the application for a lot line change this would put the driveway on one lot with the house, but would make the other lot which was approved lot a 113 feet to a less than required lot area of 84 feet.

If the less than the required lot area is granted this would alter the essential character of the neighborhood (§ 267-B 2B3). By this I mean a

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new structure on the less required lot area would be approximately 21 feet from the side of my house.

A perc test was done on the less required lot area this past summer and failed.

On January 5, 2016 the failed perc area was covered with straw and plastic (have photo) when talking to the Building Inspector this is not permissible.

Knowing Mr. Ferrara, I personally approached him on January 7, 2016 and talked to him about his dilemma of selling his home with the driveway on the other lot. So I talked to Bob and negotiated a deal that I would purchase half the lot for a fair price and which he agreed on. By making this agreement it would make it easier for him to sell his house and at the same time it would preserve and protect the character of the neighborhood and the health, safety and welfare on the community which it has been for 46 years.

In closing I would like to thank the board for the opportunity to express my comments on this subject. Thank you and good evening”.

Mrs. Ferrara comments as follows:

She said that these are the facts; one he owns both properties. He wants a variance to move it around, now as everybody is aware, if you go down the road, there are houses everywhere from side to side. Even a little bit closer. So the bottom line is, is the lot buildable, yes or no. The answer is yes and there is going to be tons of space. As he said, and we were told, even moving (and you can see in the picture the house was build many moons ago) and how they now want the garage and it is going to be estimated to be \$40000.00or more, because you also have to move the garage and everything else, it's a big job. For simplistic purposes this the most easily, simplistic and less congested way to do something. Now we also have an idea of what the house is going to be put on there, what it looks like, it's not going to look like a gigantic mansion or anything. It's very simple. It will blend in; it is not going to be an eyesore. Seeing an empty lot is an eyesore. The property has been on the market for three years and no one in the area has been interested. There were plenty of opportunities. We now have someone interested and we have seen his project, and we are in a binding contract. I think both lots should be grandfathered in.

Chairman Onorati explained to Mrs. Ferrara that if you keep the property the way it is, you can go right down to the Building Department and apply for a permit. No one is denying you that. Being that you want to move lines you would lose that grandfathered status. So now you would need a variance for the lot line change, you would also need a variance for the house.

Mrs. Ferrara said this is a question for the attorney, moving forward, is it going to stay the same or is there going to be changes.

Chairman Onorati explained, that what you have to understand is going by the criteria which is laid down by the state of New York, we have to go by the criteria and to be very honest all the criteria has not been proven here tonight. Do you understand that?

Mrs. Ferrara said yes.

Chairman Onorati continued that we have to go by some sort of criteria and that is in order to do justice to the town. It mentions in here, in making a determination the Zoning Board of Appeals shall take into account the benefit to the applicant, if the variance is granted it is weight against the detriment to the health, safety and welfare of the neighborhood that would occur if the variance will be granted and that is what we are bound by.

Mrs. Ferrara said that as I mention before, keeping to the fact that, people who live on the road many would have been protected if it would be an issue, as I see in the area and as I think that making a good judgement call from what you guys are saying, I don't think this should be a problem.

Chairman Onorati said, and I understand your opinion.

Mr. Truex commented:

The reason I offered Mr. Ferrara to buy half the lot is because my Dad just passed and my Mom is there, my wife's health is getting bad so we were planning to move in to the house, wanted to help Bob out, wanted to buy half the lot so he can have his half plus money.

Chairman Onorati asked how big the lot is now, is it an acre?

Mr. Ferrara replied, with the change it is .60 acres

Chairman Onorati asked what the (vacant) lot would be with the change.

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Mr. Ferrara answered .42 acres.

Mr. Truex commented:

I also add that there is the original part of all the houses for 1969 that's how they are laid out. They are 113 feet of road frontage.

Attorney Bavoso asked what the lot size for each one is. Are they all roughly about an acre also? Mr. Truex did not know.

Ernie Johnson, Mr. Ferrara's Surveyor said he thought probably they weren't, he thinks the back line stayed the same so they were probably half acre lots.

Mrs. Josephine Bhandarkar had the following comment:

The houses down the street that she is talking about, that one is so close together and were there before these houses were built so the lot size, the variance and everything would be different at that time as you said, so it's not the specs now.

Chairman Onorati said what you are saying is a different section of the road was done at a different time.

Attorney Bavoso said the minimum requirement has changed.

Board Member Jeffrey Soons asked Mr. Ferrara that if he does not get the lot line change does that mean your contract fails.

Mr. Ferrara replied, yes.

Mr. Soons continued, that earlier you said that you would be willing to take Mr. Truex's offer.

Mr. Ferrara said honestly there wouldn't be a questions if he came up with a little bit more , I'd be really taking al loss, I feel bad, we agreed to forty four feet.

Mr. Truex said that he approached Bob to buy the lot, came up with a price, to split the lot fifty fifty, nice little area next to his driveway.

Mr. Soons said you mentioned you would suffer a loss if the contract did not go thru, how much for the lot?

Mr. Ferrara said \$ 60,000.00

At this time Mr. Ferrars's real estate lady, Carol Buchanan spoke and said that it is a discussion she would need to have with Mr. Ferrara.

Chairman Onorati asked Ms. Buchanan how someone can go into a contract when you don't know what the lot is going to be.

Ms. Buchanan said that the contract is contingent on this, Robert is going through the process. Until Robert goes through the process he is legally bound to this person.

Mrs. Ferrara said that if we actually take a loss, changes would be with the water, the taxes the bills. At this time a brief discussion with the real estate lady on doing only part of the property.

Mr. Truex commented:

I just want to split it down; I'm just trying to help out Bob, that way I don't have to worry about having someone next to my house. That way Bob has land for his property and a better chance of selling his house and I am helping him out by buying half the lot. Just run a line.

Mrs. Ferrara said, if it not a buildable lot what do you do with it. You're paying taxes. He bought the property with the intent to build on it and now you're saying it's not.

Chairman Onorati said, attempt to build

Mrs. Ferrara said if it's not buildable, what, does the state take it; he's responsible for the taxes. If you have something you sell it and anybody who wants to buy it.

Chairman Onorati said what the potential buyer is doing, maybe you should have said, is that a buildable lot, yes it is, does it have perc, yes or no – correct

Mrs. Ferrara said right.

Chairman Onorati said but you didn't do that when you bought the property.

Attorney Bavoso said to clarify the grandfathered versus the buildable lot, right now if you don't change the lot line technically that lot is buildable because it was created prior to the current zoning. If you end up with a buyer that was willing to take it subject to the driveway and they wanted to build something on it they

could as long as they meet all the setbacks. What changes the situation is moving the lot line.

Mrs. Ferrara said that if we don't move it, as far as we know it is a buildable lot-ok, if it stays within the parameter of the grandfathering.

Attorney Bavoso said if the lot doesn't change you can build on it. The reason why we are here is because changing the lot then requires the area variance because you have to meet the current zoning. The Real Estate (lady) can take this conversation to the potential buyer.

The board discussed adjourning the Public Hearing until February and the following motion was made.

Motion by Bruce Lewis, seconded by Jeffrey Soons to adjourn the Public Hearing until February 11, 2016 at 7:00 P.M.

All in Favor

MOTION CARRIED

Roat / SBL# 20-2-1 / TC-Town Commercial Zone / Us Rte. 6 /PUBLIC HEARING

Applicant is applying for an area variance of 195-17 A (1) to allow for two existing accessory structures in the front yard.

The Certified Return Receipts were collected and recorded. The Public Hearing notice was read as it appeared in the Times Herald Record.

Chairman Onorati asked who was presenting:

Mr. Donald Roat stated his name for the record. Mr. Roat explained to the board that he had purchased the property with the two sheds, he found out a few days before closing that they did not conform to the towns zoning. Mr. Roat continued that he has a corner lot on Mt. Orange and US Rte. 6, and that the sheds are considered to be in the front yard based on that corner lot according to the zoning.

The Chairman asked Mr. Roat to address the area variance criteria.

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance.

Mr. Roat replied, "No, there nice looking sheds, especially for that area".

- Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

Mr. Roat replied, "No".

- Whether the requested variance is substantial.

Mr. Roat replied, "No, not at all".

- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Mr. Roat replied, "No it will not, been there since"

- Whether the alleged difficulty was self-created:

Mr. Ferrara replied, "No, I just bought it that way".

Chairman Onorati opened the Public Hearing by asking for any questions, comments or concerns. Let the record show that there were none.

Board member Jeffrey Soons asked the applicant when he found out about the sheds being in violation and Mr. Roat explained that it was a few days before closing when the title report came back. Mr. Soons asked if Mr. Roat was counting on them being useable and Mr. Roat said yes, and that he uses them for his tools, lawn mower, etc. He's a Plumbing contractor.

There were no other questions.

Chairman Onorati asked for a motion.

Motion by Raymond Spiak, seconded by Bruce Lewis to grant the variance to allow the two existing structures in the front yard.

Vote Upon roll Call:

Bruce Lewis	Aye
Jeffrey Soons	Aye
Raymond Spiak	Aye
Richard Onorati	Aye

Chairman Onorati declared the area variance **GRANTED**

II. OTHER BUSINESS

Approval of Minutes for December 10, 2015

Motion by Jeffrey Soons, seconded by Bruce Lewis to approve the minutes from December 10, 2015 as submitted.

All in Favor

MOTION CARRIED

Chairman Richard Onorati adjourned the January 14, 2016 Town of Wawayanda Zoning board of Appeals meeting at 7:48 P.M.

Respectfully Submitted,

Patricia Battiato
Secretary to Zoning