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

MINUTES
March 7, 2019

MEMBERS PRESENT: Chairman Marion Fabiano, Bob Mesmer, Tim Phillips, Dan Drexelius and John Braddell

MEMBERS ABSENT: Betty Harris

OTHERS PRESENT: William Shaw, Code Enforcement Officer Rhonda Tollner, Zoning Clerk

Chairperson, Marion Fabiano 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) **357 South Lane – Timothy Pickering**
The property is zoned R1D. The applicant is proposing to construct a covered front porch encroaching three feet into the required front yard setback. Schedule 1 of the Zoning Code requires the minimum front yard setback of 35 feet, making it necessary for a 3 ft. front yard setback variance.

Appearing before the Board was Mr. Tim Pickering of 357 South Lane. Mr. Pickering explained he would like to put a new front porch on his home. The porch would be open and not block anyone’s view.

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

A motion was made by Phillips / Drexelius to **GRANT** the request for a 3 ft. front yard setback variance for the construction of a front porch on a single family dwelling at **357 South Lane**.

Roll Call:
   - Ayes: Fabiano, Drexelius, Braddell, Mesmer, Phillips
   - Noes: None
   - Carried

Rationale:
   1. This action was taken because the requested variance will not produce an undesirable change in the character of the neighborhood
2. This action was taken because it will not affect the neighboring view.

2) 152 Park Lane – Matthew Plucinski
This property is zoned R1D. The applicant lives on a corner lot and is proposing to construct a 6 ft. high vinyl fence 24 ft. into the required front yard setback. Schedule I of the Town Code requires a minimum front yard setback at 35 ft. making a 24 ft. front yard setback variance necessary. Section 407-155D states that no fence or wall over three feet in height shall extend into the minimum front yard of any lot; making it necessary for a three foot height variance.

Appearing before the Board was Mr. Matt Plucinski who resides at 152 Park Lane. Mr. Plucinski explained he has a corner lot and would like run a 6 ft. high fence 24 ft. perpendicular the side of his house then parallel to the road towards the back property line and enclose his rear yard. The fence is to protect his two dogs and eventually children in the back yard. Mr. Plucinski stated that the fence would also provide privacy because of the corner you could see right thru the house. Board member Braddell, expressed concerns with the height of the fence on a corner obstructing the view of traffic and people using the sidewalk. Chairman Fabiano stated that 24 ft. was an extreme encroachment into the side yard and there were no other fences in that neighborhood.

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

A motion was made by Mesmer / Braddell to DENY the request for a 24 ft. front yard setback variance for a fence on a corner lot at 152 Park Lane.

Roll Call:
Ayes: Fabiano, Drexelius, Braddell, Mesmer, Phillips
Noes: None
Carried

Rationale:
1. This action was taken because the requested variance will produce an undesirable change in the character of the neighborhood creating safety issues
2. This action was taken because of the excessive encroachment and no hardship was shown

3) 2306 Oakfield Road – Gene Mongan
This property is zoned R-1C. The applicant is proposing to demo the existing single family dwelling and construct a new single family dwelling 12 feet closer to the shoreline than the previous dwelling (Please review the survey
for this project in your packet for measurements for location of the new dwelling). Section 407-18C1 states: where there are already two principle structures on adjoining lots, no closer than the average distance of the two adjoining structures to the river shoreline, but no less than the rear yard for the district; Making it necessary for 91 ft. closer to the shoreline than the average distance between two adjacent primary structures variance.

Board member Dan Drexelius recused himself from participation of this variance request because of prior business dealings with the applicant.

Appearing before the Board was Mr. Gene Mongan. Mr. Mongan explained to the Board that he would like to demo the existing home and rebuild. Mr. Mongan said he would like to locate the new dwelling where the old dwellings’ deck is now so to use the newer septic system that already exists. This would place the new dwelling roughly 12 ft. closer to the river than the old footprint. The requested 103 ft. variance, which includes the 12 ft. closer than the old footprint, is derived from the average distance of adjoining properties 91 ft. + 12 additional ft. Mr. Mongan said he discussed with his neighbor, Mr. Lutnick with his intentions and blue prints for the property. He understood Mr. Lutnick’s concerns for the view and respects that he is there tonight, but feels 12 ft. will not affect his view. If he took to older home that sits behind the garage out of the equation there would be no need for a variance.

Speaker, Dr. Lutnick, who resides at 2266 Oakfield Road, the adjacent property, opposes the variance request. Dr. Lutnick explained that if the new home is build were that old house was he had no objections but not where an accessory structure, the deck, is now because their view will be obstructed.

Speaker, Ms. Geiger, resident at 2320 Oakfield is concerned that the new home would block her view. The Board assured her that no views of the river would be compromised.

Speaker, Elizabeth Lutnick, who resides at 2266 Oakfield opposes the variance request also concerned with the view of the river.

Speaker, Mr. Mongan again requested the additional 12 ft. He stated that he agreed with the town code but explained he felt that this was an extenuating circumstance where one older dwelling sets much closer to the road than the rest in the neighborhood, greatly affecting the formula. If he were allowed to move 12 ft. closer to the shoreline, he would still be in line with the other homes nearby as shown on the google earth photo. Speaker, Bill Shaw, Code Enforcement Officer explained they used web mapping to get the measurements on the application. He stated there were a lot of non-conforming things going on in this area.
A motion was made by Mesmer / Braddell to close the public hearing. All in favor.

A motion was made by Mesmer / Phillips to GRANT the request for 91 ft. closer to the shoreline than the average distance between two adjacent primary structures variance for the construction of a new single family dwelling. This would locate the new dwelling in the same location as the old dwelling excluding the deck.

Roll Call:
Ayes: Fabiano, Mesmer, Drexelius, Braddell, Phillips
Noes: None
Carried

Rationale:
1. This action was taken because the proposed variance will not have an adverse effect or impact on the general conformity of the neighborhood
2. This action was taken because the difficulty was not self-created

A motion is in order to suspend the rules to add a variance extension request to the Agenda.

A motion was made by Mesmer / Drexelius to suspend the rules to add a variance extension to the Agenda. All in favor.

4) **SBL # 51.19-1-19** A letter was received requesting a 60 day extension to the variances granted on Sept. 7, 2019, for the construction of a single family dwelling at 851 Colony Road.

A motion was made by Mesmer / Phillips to GRANT a sixty day EXTENSION to the variances granted on September 7, 2019 for the construction of a single family dwelling on SBL # 51.19-1-19.

Roll Call:
Ayes: Fabiano, Mesmer, Phillips, Braddell, Drexelius
Noes: None
Carried

**CORRESPONDENCE:**

1. Letter regarding 152 Park Lane
2. E-mail regarding 2902 Love Road
3. Information packet from 1437 Ferry Road
4. Letter regarding SBL #51.19-1-19 Fix and Colony Rd.
5. Letter regarding 2306 Oakfield
OLD BUSINESS:

1) **4738 East River Road - Lutnick**
   An email was received for the request for a height variance to roof a boat hoist on the water’s edge to remain on the Table.

   A **motion** was made by Braddell / Mesmer for the request for a height variance for a boat hoist on the water at **4738 East River Road** to **remain on the TABLE until August 1, 2019**.

   **Roll Call:**
   - **Ayes:** Mesmer, Phillips, Drexelius, Braddell, Fabiano
   - **Noes:** None
   - Carried

2) **1437 Ferry Road – Bedell Lighthouse LLC**
   This property is zoned B2 and a legal non-conforming lot without a principal building or principal use. The Applicant has created an outdoor storage area (333 ft. x 111 ft.) without the required variances and site plan approval. The applicant is applying for numerous variance (two use variances and four area variances) for the Bedell House property. The Applicants use variances must be addressed first because if the use variances are denied; the area variance will not need be addressed. At the June 5, 2014, ZBA meeting, the Applicant was granted a use variance to expand a non-conforming building without a primary structure and was also granted a 65 ft. front yard setback variance to put an addition on the hot dog stand at 1437 Ferry Rd. The Applicant is requesting a use variance to have two principle structures on one lot (boat club and cottage), both of these structures have been in use before the Building Dept. began keeping records. The Applicant is also requesting a use variance for two principle uses on one lot (boat club and cottage), both of these use have also been in use before the building dept. has kept records. It is the definitions from Section 407-10 Principal Building and Principal Uses that make the use variance necessary for two principal structures and two principal uses. The Applicant is also requesting a new outdoor storage lot for boats and trailers 2.4 ft. from the rear property line. Schedule 1 of the Zoning Code require 20 ft. minimum rear yard depth, making it necessary for a 17.6 ft. rear yard setback. The boat club is located 3 ft. from the rear property line; Schedule 1 of the Zoning Code set the minimum rear yard setback at 20 ft., making it necessary for a 17 ft. rear yard setback variance. The cottage is located 65 ft. from the center of Ferry Rd.; Section 407-18A set the front yard setback for Ferry Rd. at 80 ft. from the center of the right of way at 80 ft., making it necessary for a 15 ft. front yard setback variance for the cottage. The off-street parking
utilized by the Village Inn is located 49 ft. from the center of Ferry Rd., Section 407-18A set the minimum front yard setback for Ferry Rd. at 80 ft. from the center of the right of way, making it necessary for a 31 ft. front yard setback for the off street parking.

This application was tabled last month so the applicant could submit information addressing each of the criteria for all the variances requested including:

1. A narrative of the history of this property and what and when any changes were made.
2. A detailed submission addressing each of the criteria for all of the variances sought, explaining with evidence why the variances should be granted
3. Possible submission of site plan for review and approval by the planning board

At this meeting, appearing before the Board was Mr. Jim Daigler, representing Bedell Lighthouse LLC, who handed out a new packet of information to the Board. Mr. Daigler stated that they had tried to hit all the points required for their use variances. He started first with the history of the property.

There was a short recess while the recording disks were changed.

Mr. Daigler continued explaining the packet. The idea of the zoning is to develop water front business which is what Ms. Guenther has always tried to do. There is also a need for this as shown by the surrounding business. Mr. Daigler also stated how unique the area was. The variances sought are consistent with the character of the neighborhood. There is no visual or physical impact to the neighborhood. It’s basically what’s going on on the other side of the fence.

Speaker, Kevin Schenk, esq., representing Anchor Marine, the adjacent property to 1437 Ferry Road. Mr. Schenk said he hoped everyone had a chance to review what he had submitted last meeting, stressing again, that he believes Ms. Guenther has not meet the financial requirements or criteria to show that her company could not realize a reasonable rate of return on this property any other way. Also pointing out the situation was self- created for this reason his clients would hope for the use variances be denied.
A motion was made by Mesmer/Braddell to close the public hearing. All in favor.

A motion was made by Mesmer/Braddell to TABLE the applicants request for further review of the information that was submitted at this meeting.

Roll Call:
Ayes: Fabiano, Drexelius, Braddell, Mesmer, Phillips
Noes: None
Carried

3) 2902 Love Road – Robert Niemiec
This property is zoned R1A. The applicant is proposing to construct a 55’ x 100’ x 27’ storage building. He currently has 448 sq. ft. garage space. Section 407-23A sets the maximum allowable garage space at 1200 sf., making it necessary for 4748 sf. (15.8) garage space variance. Section 407-142E sets the maximum height for an accessory building at 18 ft., making it necessary for a 9 ft. height variance.

Appearing before the Board was David Wylier, architect for Mr. Niemiec and Mr. Niemiec who resides at 2902 Love Road. Since the discussions that took place last month at the meeting, Mr. Wylier submitted a new proposal to the Board. In this new proposal, a 35% reduction to the storage building which would be reduced to a 45’ x 80’ also reducing the height to 20’. The exterior color of the building would also be changed to a green and tan to better fit in with the environment. The location would remain the same and drainage would be addressed at the appropriate time.

Speaker, Margaret Tynski, 2910 Love Road first made a request that Board member Dan Drexelius recuse himself from commenting or voting because of business dealings with both the applicant and herself. Mr. Drexelius immediately recused himself from participating from this matter.

Ms. Tynski stated that she had spoken against the variance request last month but after she left what really bothered her was that Mr. Niemiec had not been forthcoming with the Board about his residents. Also, that the building was still very large and inappropriate for the area and could by misused by future residents. Mr. Niemiecs has no children, is not married, had a john deer lawn tractor and a single car that is on the property. The storage is an excessive amount. Ms. Tynski asks the Board again to please deny the request for this industrial size building if for nothing else for misrepresenting himself at a legal proceeding.
Speaker, Robert Rockwood, 2873 Love Road, also objects to the size of the building and agrees with the fact that Mr. Niemiec does not live in the home.

Board member, Mesmer asked Mr. Niemiec if he was willing to reduce the building even more to perhaps a 40’ x 60’ which, Mr. Mesmer reminded him, is still double what code allows.  Mr. Niemiec requested a 42’ x 70’ structure. Mr. Mesmer further discussed size and suggested a 42’ x 60’ structure.

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

A motion was made by Mesmer / Phillips to GRANT the request for a 1768 sq. ft. garage space variance to construct a 42’ x 60’ storage building at 2902 Love Road. NO COMMERCIAL USE.

Roll Call:
    Ayes:  Mesmer, Phillips, Braddell,
    Noes:  Fabiano
    Recused:  Drexelius
    Carried

A motion was made by Mesmer / Phillips to GRANT the request for a 2 ft. height variance for the construction of a 42’ x 60’ x 20’ storage building at 2902 Love Road. NO COMMERCIAL USE.

Roll Call:
    Ayes:  Phillips, Mesmer, Braddell,
    Noes:  Fabiano
    Recused:  Drexelius
    Carried

Rationale:
1. This action was taken because the Board recognizes the need for storage.
2. This action was taken because it was a compromise for to the current storage needs that the applicant requested.

APPROVE MINUTES:

A motion was made by Harris / Mesmer to Approve the January 3, 2019, ZBA Meeting Minutes as written.
Roll Call:
Ayes: Fabiano, Drexelius, Mesmer, Braddell, Phillips
Noes: None
Carried

OTHER MINUTES RECEIVED:
Board of Architectural Review Minutes – December 18, 2018
Planning Board Agenda – January 14, 2019
Planning Board Minutes – February 11, 2019
Town Board Agenda – Regular Meeting #4, March 4, 2019, Regular Meeting #5, March 18, 2019
Town Board Minutes – Regular Meeting #3, February 4, 2019
Long Range Planning Committee –

A motion was made by Harris / Phillips to adjourn the meeting at 8:12 p.m.
Minutes prepared by Rhonda Tollner, Zoning Clerk.