

**VILLAGE OF FREEVILLE**  
**ZONING BOARD OF APPEALS MEETING MINUTES**  
**Special Meeting-Variance Application**  
**October 9, 2024**

The Village Zoning Board of Appeals (ZBA) met at the Village Hall, 5 Factory Street, Freeville, NY, on Monday, October 9, 2024.

**Call to Order:**

The Meeting was called to order at 7:00 p.m. by Chairperson Kristen Olson.

**Present:**

ZBA Members: Kristen Olson (Chair), Anusuya Rangarajan (Vice Chair), Marcus Griffith, David Lampman, and Michael Whalen

Casey Drader, Village of Freeville Code Enforcement Official (CEO)

Miles McCarty, Village of Freeville Mayor

Tom Cavataio, Village of Freeville Planning Board Chair

Mike Parker, Freeville Fire Chief

Ralph Varn, applicant

Residents: Hugh McElyer, Derek Peppin, Melanie Allen, Charles Hunt, Pam O'Dell, Jason Cuykendall, Cynthia Cuykendall, Betsy Lampman, David Fogel

**Approval of Minutes:**

Member Whalen motioned to approve the Minutes from the Board's most recent meeting (held on September 9, 2024), seconded by Member Rangarajan. All Members present voted Aye.

**Public Hearing:**

Member Griffith motioned to open the public hearing for an area variance for the property at 0 Groton Avenue. Member Lampman seconded the motion. All Members present voted Aye.

**A. Statement of Case by Chairperson Olson**

Chairperson Olson provided a recap of the events that brought the variance before the ZBA:

The subject of this public meeting is an area variance. The applicant, Ralph Varn, proposed constructing a two-story, single-family residence on a vacant lot at 0 Groton Avenue in the Village of Freeville (tax parcel #4.-2-4). The lot is currently zoned residential and has access to a public sewer. The applicant submitted a building permit application on August 13, 2024, and that application was denied by the CEO, Casey Drader, on August 16, 2024, because it was at variance to area dimensions. The applicant filed an area variance request in response to this denial. The variance requests were threefold: road frontage, minimum lot size, and side yard setback requirements.

The applicant met with the ZBA at its regularly scheduled meeting on September 9, 2024, to discuss his variance application, and the ZBA scheduled a public hearing for October 9, 2024. Chairperson Olson summarized the test for granting area variances upon which the Board must base its final decision and reminded the ZBA that it must also take into account whether

approval of the variance would align with goals set forth in the 2013 Village of Freeville Comprehensive Plan (VFPC).

As required under General Municipal Law 239, the application was forwarded on September 7, 2024 to the Tompkins County Planning Department for review due to the property's location within 500 feet of a county or state road. The Planning Department reviewed those materials and, on September 18, 2024, issued a letter to the ZBA determining that "the proposed action will have no significant countywide or inter-community impact."

The building permit was denied for failing to meet three specific area dimensions under Article 3 of the Village of Freeville Land Use and Development Code (updated July 2022) (LUDC), Section 361 (Dimension Regulations for Residential Zone [R]):

- 1) Subsection 361.01 Minimum Lot Area: The minimum lot area for construction for lots with public sewer, which this lot has, is 15,000 square feet; the lot in question is 0.26 acres or less than 12,000 square feet.
- 2) Subsection 361.02 Minimum Lot Frontage: The minimum lot frontage for construction for lots with public sewer is 100 feet; the lot in question is 57.59 feet at Groton Avenue. (The lot is slightly wider at the rear—65.28 feet—but that does not offset the frontage requirement.)
- 3) Subsection 361.03 Side Yard: The side-yard setback requirement is 25 feet on both sides for the principal residence (i.e., the house); in the proposed construction the setback is 19.5 feet on both sides at the front. (Because the lot is slightly wedged-shaped, the north setback at the rear of the proposed construction would be 22 feet. However, that does not figure into the minimum side-yard setback requirement.)

The proposed construction meets other area requirements for minimum front- and rear-yard depths, maximum height, and lot-coverage.

Chairperson Olson noted that Article 4, Section 415 of the LUDC (Nonconforming Vacant Lots of Record) provides a path for residential construction on nonconforming lots providing that three tests are met:

- 1) The lot must not have continuous frontage or lot lines in common with other lots in the same ownership.
- 2) The minimum yard dimensions and other requirements not involving lot area or frontage conform to the regulations. Variance or yard requirements may be obtained only through appeal to the ZBA.
- 3) The Health Department approves the development of the nonconforming lot.

As the proposed construction has yard dimensions and other requirements not involving lot area or frontage that do not conform to the LUDC, this path is not available to the applicant, and a variance would still be required.

Chairperson Olson then described the five tests that the ZBA will employ to judge whether to grant the variance:

- 1) How substantial the variation is in comparison to the requirement.
- 2) The effect, if the variance is allowed, of any increase in population density, intensity of development, or generation of traffic on the existing public facilities.
- 3) Whether the variance will produce a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties.
- 4) Whether the practical difficulty in observing the dimension regulations can be overcome by some method reasonable for the applicant to pursue, other than a variance.
- 5) Whether in view of the manner in which the practical difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.

Chairperson Olson then made three further points drawn from the 2013 VFCP:

- 1) A survey made of local residents found there was "a consensus for maintaining the status quo in terms of residential development, an increase in housing density in Freeville could benefit the Village by increasing the tax base and, through an increase in population."
- 2) "The Village's sewer system (as of 2013) is currently operating at just half of its potential capacity, and could easily accommodate increased development."
- 3) "For these reasons, the Village should not discourage appropriate subdivision of properties and new residential development that complements and enhances the existing architectural and social character of the community."

#### **B. Applicant Presentation**

The applicant, Ralph Varn, stated that he purchased the property, a "legal lot," as a "building lot" and noted that other houses in the Village have similar (i.e., nonconforming) lot dimensions and road frontages. (Mr. Varn distributed a set of tax maps of selected Village lots that were similar to the lot in question, demonstrating the degree of nonconformity of these parcels.) He noted that he designed the house to be fairly narrow in order to maximize the side yard setbacks. He purchased this lot in a neighborhood on Groton Avenue where there were similar, nonconforming lots. As a builder, he prefers smaller, 100-foot lots that are 150 feet deep with 15-foot side-yard setbacks. That was what he was used to work with. Given that the lot on Groton Avenue was narrower than he was used to, he designed the house to be narrower than normal. He also argued/assumed that the LUDC lot dimensions were for new subdivisions, where the setbacks could be addressed in designing lot sizes. The lot at 0 Groton Avenue was an "old lot," presumably governed by the "old rules" then in effect when the lot was laid out. He did not believe that his new construction would change the character of the neighborhood on Groton Avenue, where some lots are narrow, and the houses are close to the lot lines. To recap, he believed that the lot was "legal," the benefits he sought "cannot be achieved in any other way," "the requested area variance is not substantial," the

variance will not have adverse effects in the neighborhood, and "the alleged difficulty was not self-created."

**C. Public Statements Village Residents and Interested Parties:**

- 1) Resident Derek Peppin was curious about the proposal. He thought the design was not a detriment to the character of the neighborhood. He was concerned that the proposal depended on multiple area variances. If there were only one variance, that might not be substantial, but having three caused it to be elevated in concern in his mind.
- 2) Planning Board Chair Tom Cavataio liked the proposal because it was an "infill project," which is what should be happening in the Village. He wondered whether there was more flexibility in the design of the house that could minimize the side-yard-setback problem, in particular. (The applicant described that the house as designed is 1,219 square feet in area and asserted that he "wanted to keep it the way it is" [i.e., as designed].)
- 3) Village of Freeville Fire Department Chief Michael Parker noted that he appreciated that the applicant was attempting to add housing stock to the Village and increase the tax base, both of which he favored. But as a member of the Fire Department, he needed to emphasize how important the side-yard setbacks are. Two recent fires in the Village demonstrated how dangerous house fires can be for neighboring structures and Village residents because of infrared heat, which can ignite nearby buildings and melt objects in the vicinity. Also, firefighters are placed in unnecessary danger when they lack sufficient maneuvering room around a burning building; all because the adjacent structures have been sited too close. The setbacks are in zoning codes for a reason—to protect us. This is an issue of public safety!
- 4) Resident Charles Hunt noted that the examples of nonconforming structures cited by the applicant were constructed many decades before there was any zoning, and therefore not very applicable.
- 5) Resident Pam O'Dell wondered about the wetlands at the rear of 0 Groton Avenue. (Chairperson Olson noted that she would cover that issue later.)
- 6) Resident Jason Cuykendall noted that he was not against the idea of an additional house on Groton Avenue as it was a good residential neighborhood. He was surprised when he saw how the lot was being advertised for sale and even contacted the real estate agent to be sure that any would-be buyer was apprised of the lot's nonconforming status. He felt the requested variances were major in dimension. It is not as if the design is within 90 to 95% of conformance. As a member of the Board of Trustees, he was aware that the Trustees and the Planning Board have revisited the set-back dimensions and decided to keep them in place for valid reasons. While there are some lots on Groton Avenue and in the core of the Village that are similarly small, most on the side streets (e.g., Cook, Factory, Cedar, Brooklyn, Willow) are ample. There is not a single lot on the side streets in the Village with a house that has as small a frontage as the lot that is the subject of this variance. Jason also noted that there is an

adjacent lot that is partially vacant (only the garage remains after a house fire) that could be merged with the lot in question to form a conforming parcel.

- 7) Resident Cynthia Cuykendall was in favor of more single-family residences in the Village. She voiced concern about overriding current laws that were established for a reason. She was concerned about fire-safety issues and if she could, she would vote to deny the application.
- 8) Resident Betsy Lampman grew up in a suburb of Rochester, New York where 45-foot wide lots were common. She would favor the application as being environmentally sound for its use of a small parcel and would like to see more construction of this sort in the Village.
- 9) Resident Rachel Dickinson commented via a previously submitted email, noting that she lived on Main Street next to a house that was constructed too near her own. She further observed that "the area requirements exist for the good of the community, which includes your neighbors, and I believe they should be adhered to with new construction. It's my understanding that there are specific criteria for granting variances to our zoning codes and I don't believe this request meets any of those."

#### **D. Rebuttals**

The applicant, Ralph Varn, commented on several issues raised by member of the public:

- 1) He appreciated the concern over the issue of side-yard setbacks and fire but noted that currently, the only nearby structure was a partially burned garage that may soon be razed. The lots to the south of the parcel are backyard lots with main houses that are very far from his lot line.
- 2) He returned to the concept that the lot he purchased should be evaluated under the "old" view of zoning and that the current zoning law generally applied to new subdivisions. "...your neighbor has a seven-foot setback and you are doing an addition, so you can get a seven-foot setback because he got one." "That's the way I've always thought it worked." "And new zoning laws were for the future."
- 3) He viewed his proposed variances as having very little impact on the neighborhood and the Village.
- 4) He clarified that he has been constructing houses for 45 years and that he was aware when he purchased the lot that it was nonconforming. He also agreed that he would have to meet all 2024 building and energy codes in constructing a new house as opposed to "old" codes. This would be true even if the vacant lot had been subdivided a hundred years ago.

Chairperson Olson then followed up on two points raised earlier:

- 1) The wetland at the rear of the parcel is not an issue as the proposed siting of the house will not impinge on it. This was evaluated by the Tompkins County Planning Department.

- 2) The lot in question at 0 Groton Avenue was not subdivided prior to sale to the applicant. The previous owner had two lots and sold them separately.

She then made the following observation: There are several grandfathered, nonconforming lots, as we've discussed, many that have frontages of less than 100 feet, and that have existed since the 19th and early 20th century, and which form the character of much of the village. Yes, in my opinion, the character of the village would be very different if we didn't have that type of development pattern, but I think a question you need to answer really is how to balance the interest of adding housing, adding to the tax base, with the issue of safety in the village?

Fire Chief Parker elaborated on the dangers of house fires to adjacent structures. He also noted that there is no defined "safe" distance when it comes to fires as radiant heat travels a long way. Poses a danger to firefighters who have to fight the fires. The 25-foot setback was a reasonable yardstick, in his opinion.

Chairperson Olson then clarified the issue of self-created hardships, pointing out that if one had owned a property prior to the implementation of zoning or a change in zoning regulations, one wouldn't have self-created a hardship by having one's parcel suddenly become nonconforming. But purchasing a nonconforming property after the implementation of a law means that one's issues with that parcel are self-created if what one wants to do is at variance to the law. Whether one was aware of the law at the time of purchase is moot in this context.

Member Whalen noted that the 2013 VFPC reported that "About a third of survey respondents favored the construction of more single-family houses in the Village, while nearly 60% were satisfied with the current number of such houses." To him that meant that residents desired to maintain the Village's residential nature and he argued that the Village should tread carefully in expanding the housing stock to not change the character of the Village's "rural" nature. With some exceptions, the Village is not a place where houses are jammed together "cheek to jowl." A great number of houses in the Village aren't close together. They have a bit of land around them. It's an esthetic issue. He also reminded the ZBA that it was not its function to second guess the VFPC or the LUDC, both of which were created by the Village of Freeville Planning Board and approved by the Village of Freeville Board of Trustees after years of effort.

Member Griffith asked whether the design of the project could be modified to better address the fire issue. Could the house design incorporate a sprinkler system to mitigate the fire risk? The applicant returned to the concept that there was ample free space outside of his lot that provided the fire buffer. His lot is more than far enough from the house on the adjoining lots on Main Street. He admitted that this free space would disappear should adjacent lot owners construct facilities within their 25-foot side-yard setbacks.

The CEO Drader clarified that he met with the applicant before the property sale occurred and advised him that the parcel was out of conformity on several area dimensions. He advised the applicant that he would have to seek a variance to proceed. He also noted that while there was public sewer on Groton Avenue, the parcel had no other amenities such as electrical connection or a well. Thus, the parcel "was not technically a building lot."

Drader stated that "codes are reactive not proactive." They are enacted because of previous problems and tragedies. He also observed that "...let's dispel this notion that the code only

applies to a great big new production somewhere else. The code applies to everything that's done in the village. ...I understand why you're making the argument, if I were you, I'd make the same argument. I appreciate that, but it's a false argument. ...It's a small lot, and not every lot is buildable."

The applicant has not approached adjacent property owners about the potential for acquiring additional acreage to merge with the lot in question. He also clarified that he has not previously built in the Village. Most of his developments have been in the Ithaca area—Snyder Hill and Warren Road areas. In these cases, large acreages were purchased and subdivided. The applicant admitted that he had to conform to the zoning regulations covering those properties.

Chairperson Olson asked about the numerical substantiality of the three area variances, which Member Lampman calculated:

- 1) Area – 12,000 square feet versus 15,000 square feet required = 3,000 square feet deficiency or **20%**
- 2) Frontage – 57.59 linear feet versus 100 linear feet required = 42.41 linear feet deficiency or **42%**
- 3) Side-yard setbacks – 25 linear feet + 25 linear feet required versus 19.5 linear feet + 19.5 linear feet = 5.5 linear feet + 5.5 linear feet = 11 linear feet deficiency or **22%**

Member Lampman observed that the largest variance concerns the frontage, which is possibly the easiest to justify because the house as designed is narrow.

ZBA members then discussed in general whether there were actions the applicant could take to ameliorate the situation, such as purchasing easements from adjacent lot owners to effectively "expand" the lot's setback footprint. The applicant even suggested that he could shift the siting of the house toward one or the other side lines if that would make the application more agreeable. However, the applicant would not want to reduce the house's footprint. Member Whalen suggested that it was not the ZBA's duty to solve the applicant's issues, and that the applicant could pursue these and other avenues if he so desired.

Chairperson Olson recapitulated the five decision factors, polling ZBA members as to their collective opinion on each. All members of the ZBA agreed uniformly that:

- 1) How substantial is the project? **All three area variances are substantial.**
- 2) Will there be an increase in population density, intensity of development, or generation of traffic on the existing public facilities? **No.**
- 3) Will the variance produce a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties? **While the project would not cause a substantial change in the character of the neighborhood, it would be pose a substantial detriment to adjoining properties in terms of fire safety.**
- 4) Can the difficulty in observing the dimension regulations be overcome by some method reasonable for the applicant to pursue, other than a variance? **The proposed house**

**cannot be as narrow as the setbacks would demand, but the applicant has not explored all alternatives, including the purchase of adjacent properties or easements to adjacent properties.**

- 5) Will the interests of justice will be served by allowing the variance? **The hardship was self-created.**

Member Whalen motioned to close the public hearing and move to a decision, seconded by Member Rangarajan. All Members present voted Aye.

**Board Vote:**

Chairperson Olson entertained a motion to **deny** the application for an area variance constructing a two-story, single-family residence on a vacant lot at 0 Groton Avenue in the Village of Freeville (tax parcel #4.-2-4). The denial was based on due consideration of the 2013 Village of Freeville Comprehensive Plan and the substantial degree of variance to area, frontage, and side-yard setbacks needed to allow the construction to proceed. A major consideration in denying the application was the danger from fire that could result from permitting a diminution of side-yard setbacks.

Member Rangarajan motioned to **deny** the application. Member Griffith seconded. The ZBA voted to deny as follows:

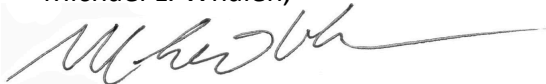
- Chairperson Kristen Olson, Aye
- Vice Chairperson Anusuya Rangarajan, Aye
- Member Marcus Griffith, Aye
- Member David Lampman, Aye
- Member Michael Whalen, Aye

**Meeting Adjournment**

Chairperson Olson entertained a motion to adjourn the meeting, which was made by Member Whalen and seconded by Chairperson Olson. All Members present voted Aye. The meeting was adjourned at 8:22 p.m.

Respectfully submitted,

Michael L. Whalen,



Member, Zoning Board of Appeals