

# EDINBURG ZONING BOARD OF APPEALS

November 2, 2023

Date of Meeting

Regular Meeting  
Public Hearings

Kind of Meeting

Sharon Leighton, Joe Crean, Robert Hartman,  
Judy Sterling and Donna Novotny

Members Presents

None

Members Absent

Mary Beth Walsh, Town Attorney  
Mary Beth Walsh

Others

Mike Arsenault, Applicant represented by Attorney Nathan Hall  
Steven Cimino

## **Regular Meeting:**

Chairwoman Leighton opened the meeting at 7:02 p.m.

## **Approval of Minutes:**

Board Member Sterling made the following motion:

BE IT RESOLVED the minutes for the September 7, 2022 meeting are approved.  
Board Member Hartman seconded the motion. All in favor, none opposed. Carried: 5-0.

**Public Hearing:**      **Application No. Z02-23**  
                                 **Mike Arsenault**  
                                 **Tax Map No. 68.17-2-1 and 68.17-2-60.1**  
                                 **Area Variances**

Chairman Leighton opened the Public Hearing at 7:04 p.m. The application was deemed complete at the September 7, 2023 meeting; adjoining neighbors were notified; and, no comments were received with the exception of the letter from Penn Heights Beach Association supporting the application. Attorney Nathan Hall stated he is representing Applicant Arsenault. He reprised the facts of the application. Discussion ensued regarding all Penn Heights lots being substandard and any of these property owners would need to appear before the Board for a variance in order to build.

**Armstrong Parcel:**

- Town Attorney Walsh noted that the Armstrong parcel is very substandard in area; the boundary line adjustment will increase the size of the parcel but will continue to be very substandard (increase to .153 acre where 1.3 acres are required).
- This Board would be granting an area variance for a parcel which is not owned by the Applicant. Property owner Armstrong would be required to apply for an area variance for their parcel for ZBA review if their intention was to build.
- The application includes a statement made by the Applicant of the intention of Armstrong to build. The Board does not have a letter or affidavit from Armstrong regarding their future building plans. Attorney Hall stated the Applicant has no knowledge of the Armstrong's future building plans but is only doing them a favor by selling them additional property.
- Town Attorney Walsh stated that if, in the future, Armstrong wished to build, Armstrong would require a ZBA variance and would need to present a plan that would meet all setback requirements.
- Board Member Crean stated Armstrong may not build for five years but would he remember to come back to the Board.
- Town Attorney Walsh stated he would require a building permit but should not be able to receive one because he is deficient in required acreage and unable to meet setback requirements. Attorney Hall stated the property owner is aware that his lot is non-conforming; the Code Enforcement Office will see this parcel does not meet the codes; and the property owner will be directed by the CEO to come before the Board and develop a reasonable plan.
- Chairman Leighton stated she would like to have a hard figure on how much each parcel is gaining for purposes of the motion. This application differs from what has been approved in the past. Attorney Hall stated he did not believe granting an area variance needs to be specific in this case but rather that the Board is comfortable with a non-conforming lot. It was agreed that a new building lot is not being created. The change is reconfiguring existing lots in a more sensible way.

Chairman Leighton closed the public hearing at 7:21 p.m.

The following criteria was reviewed by Board Members:

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance: All agree it does not.
- Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance: All agree it cannot.
- Whether the requested area variance is substantial: All agree it is not.
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district: All agree it does not.
- Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance: Board Member Crean stated it was self-created. Chairman Leighton stated it was not self-created because it was existing. Town Attorney Walsh stated that this factor would not preclude granting the area variances in either way.

Chairman Leighton stated Saratoga County Planning comments were received stating no countywide impact.

Board Member Hartman made the following motion:

BE IT RESOLVED the application is deemed a Type Two action under SEQRA and a negative declaration of environmental impact is issued. Board Member Sterling seconded the motion. All in favor, none opposed. Carried: 5-0.

Chairman Leighton made the following motion:

BE IT RESOLVED Application No. Z02-23, Mike Arsenault, Tax Map No. 68.17-2-1 and 68.17-2-60.1, Area Variances as described in the application with three requests to change three non-confirming lots is granted. Board Member Novotny seconded the motion All in favor, none opposed. Carried: 5-0.

**Public Hearing:      Application No. P05-23**  
**Steven Cimino/Frey**  
**Tax Map Nos.: 54.17-2-26, 54.17-2-40**  
**and 54.17-2-66.1**  
**Area Variances**

Chairman Leighton opened the public hearing at 7:37 p.m. She stated the application was deemed complete at the September 7, 2023 meeting; the application was referred to Saratoga County Planning as required by New York Municipal Law Section 239-M in which there was no final decision due to the fact the survey map was missing information required by the Town of Edinburg Land Ordinance; and, if variances are granted, non-conforming parcels would be created.

Chairman Leighton asked for any public comment. There was none.

The following was discussed:

- Chairman Leighton stated a survey map dated October 11, 2022 was received.
- Chairman Leighton stated while the application was deemed complete for this Board's purposes at the September meeting, some requirements were missing from the survey map and due to this omission, Saratoga County Planning could not make a decision.
- The Applicant stated the information which was added to his survey map by Code Enforcement Officer Anthony was what the Board directed the Applicant to do at the September meeting. The Applicant stated CEO Anthony researched and added in pencil some septic locations taken from existing building permits to the map he submitted at this meeting.
- The Applicant stated at the September 7<sup>th</sup> meeting, he was informed he could pencil in well and septic locations. Chairman Leighton referred to the September 7<sup>th</sup> minutes which included the following: "Board Member Hartman inquired who is responsible for additions to the map. CEO Anthony stated the surveyor is responsible for inclusion of

those locations.” Town Attorney Walsh read the requirements for submitted maps from Section 5.4.1(1) of the Ordinance. She provided the Applicant with a copy of the same. The Applicant also requested a copy of the minutes.

- The Applicant further stated an adjoining neighbor located his well 100 feet from the Applicant’s septic system and this is not the Applicant’s fault.
- Town Attorney Walsh stated this Board cannot act until Saratoga County Planning makes their decision.
- Chairman Leighton stated the application clearly implies there will be new construction; the purpose of acquiring the additional acreage is needed to meet well and septic setbacks; and, and this is why the Applicant is applying for area variances. The Applicant stated each parcel currently has a well and septic system.
- Chairman Leighton discussed adjourning the Public Hearing to the December 7, 2023 meeting. The submission requirement date is November 17, 2023. The Applicant did not believe he would be able to have his corrected map by that date. It was noted the new survey map must be submitted to Saratoga County Planning for review prior to this Board making a final decision.

Chairman Leighton made the following motion:

BE IT RESOLVED the public hearing for Application No. P05-23, Steven Cimino/Frey, Tax Map Nos. 54.17-2-26, 54.17-2-40 and 54.17-2-66.1, Area Variances is adjourned. Board Member Hartman seconded the motion. All in favor, none opposed. Carried: 5-0.

**Old Business:** None

**New Business:** None

Board Member Novotny made a motion to adjourn the meeting at 8:10 p.m. Chairman Leighton seconded the motion. All in favor, none opposed. Carried: 5-0.

Respectfully submitted,

Diane Byrne  
Secretary