

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

**MINUTES  
April 6, 2023**

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TOWN CLERK  
GRAND ISLAND, N.Y.

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

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Nick Cultrara, Code Enforcement Officer  
Rhonda Tollner, 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) 871 Whitehaven Road – Grand Island Sunrise LLC**

This property is zoned B1 (General Business). The applicant is requesting to locate ground base solar panels of a tier 3 solar array and fencing within the required setback from a residential dwelling. The residential dwelling is addressed on Whitehaven Road. Town Code §407-165.1.H(5)(c) of the solar law states; the minimum setback from the fence line of any facility shall be 500 ft. from any inhabited residence, or residential primary structure or sensitive visual receptor, on adjoining lots: making an approximate 85 ft. setback variance necessary. Also, 407-165.1.H(5)(a) setback from the fence line to all adjacent property lines is 50 ft. The approved site plan has a 100 ft. setback on the east side of the array which may accommodate an alternative to a variance.

Appearing before the Board was Jason Burford, the engineering consultant representing Grand Island Sunrise. Mr. Burford set up a large-scale diagram of the project. Mr. Burford explained that the reason for the variance request was that after the Town Board approved the site plan, the neighbor to the east of their parcel was asking for a 100 ft. setback from their lot. In order to get the energy output they needed and the 100 ft. setback, they infringed on the Whitehaven Road parcel. To avoid redesigning the site plan and getting another approval, they are asking for a 85 ft. setback variance from the

Whitehaven address. Mr. Burford also stated that the screening would remain the same and there would be no impact on the neighboring sightlines.

Board Member Phillips asked Mr. Burford about ice fall from the tower located on the parcel and damage that it could potentially cause to the solar panels.

Mr. Burford stated that the panels are made of a strong polycarbonate and should withstand any type of impact.

Board Member Braddell asked Mr. Burford why they could not just add another row of panels in a different location and not need a variance. Mr. Burford stated that the site plan was already approved and did not want to go thru the process again.

Board Member Phillips asked if the resident from 919 Whitehaven Road was present and if he would come forward. Mr. Louie Moretta who resides at 919 Whitehaven came forward. Board Member Phillips asked Mr. Moretta if he was in favor of the variance request because he would be the most affected person if it would be granted. Mr. Moretta said he had spoke to someone representing Sunrise and he agreed to the variance but said he would like to see heavier planting around his lot to provide screening right away as opposed to the 2-3 years plan when plants had matured.

Board Member Drexelius asked Mr. Burford if there were fencing around the entire solar array, Mr. Burford replied yes. Drexelius commented that a solar array in Tonawanda has fencing with a green screening material on it so you could not see through it and if that was an option for this project. Mr. Burford said they prefer to use plant material from the list Grand Island provided.

They maintain the greenery for the life of the project and they would do everything in their power to make it right for Mr. Moretta.

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

A **motion** was made by Drexelius / Braddell to GRANT the request for an 85 ft. setback variance from the required 500 ft. from a residential dwelling to locate ground mounted solar panels at 871 Whitehaven Road **WITH THE CONDITION** that Grand Island Sunrise LLC works with the resident of 919 Whitehaven Road to provide extra screening around the residential property.

**Roll Call:**

Ayes: Harris, Phillips, Braddell, Mesmer, Drexelius

Noes: None

Carried

**Rationale:**

1. The granting of this variance will not change the character of the neighborhood. This project is a substantial distance off the street and shall have adequate screening.
2. The variance amount sought for this project was not substantial at about 15 %
3. The solar project will have little to no adverse effect or impact on the physical or environmental conditions in the B1 zoned district.

4. The need for this variance is self-created but the benefit of the variance far exceeds the alternative.

**2) 4019 East River Road – Eric Zellner**

This property is zoned R1B. The applicant is requesting an underground tunnel to a basement level garage under his house. The entrance of the tunnel structure will encroach into the required front yard setback set by Town Code § 407 Attachment 1 of 50 ft. making a 40 ft. front yard setback variance necessary.

Appearing before the Board was Eric Zellner who recently purchased this property at 4019 East River Road. Mr. Zellner explained his plans to demolish the existing home and garage and build a new home. He said this was a unique shaped lot and the county right-of-way took an odd, shaped chunk out of the front of the lot where the old garage was located. His design plan included parking on the basement level underneath the new home. The tunnel to the parking would enter off the street where the detached garage was located. Because the detached garage that is coming down is in the current front and side yard setbacks the tunnel structure would need variances.

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

A **motion** was made by Phillips / Drexelius to GRANT the request for a 40ft. front yard setback variance for the entrance to a driveway tunnel which allows for underground parking at 4019 East River Road.

**Roll Call:**

Ayes: Braddell, Harris, Phillips, Mesmer, Drexelius  
Noes: None  
Carried

A **motion** was made by Phillips / Drexelius to GRANT the request for a 2 ft. side yard setback variance from the east lot line for the entrance to a driveway tunnel for the underground parking at 4019 East River Road.

**Roll Call:**

Ayes: Harris, Braddell, Phillips, Mesmer, Drexelius  
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 will not create a detriment to other residential properties. The demolition of the existing garage will allow for better view of the river for neighboring residents.
3. The project requiring the variance is mostly underground and will have no visual impact on the community.

**3) 2343 Staley Road – James Daigler**

This property is zoned R1A. The applicant was granted an area variance on August 4, 2022, for the construction of 36' x 36' detached garage making a total of 2192 sq. ft. of garage space at 2343 Staley Road. According to our records this project was not started within the six-month period and the variance expired. The applicant is therefore requesting the same variance (492 sq. ft area variance) to construct this second detached storage structure on this parcel.

Appearing before the Board was James Daigler who resides at 2343 Staley Road. Mr. Daigler explained that he was granted a variance back in August but before the drawing were completed the prices of materials skyrocketed. He stated just to be clear this would be the second outbuilding.

Chairman Mesmer stated that there was a letter from a neighbor with an objection to the project because they were selling their home and unsure of the impact this would have on their sale, but again this variance was already granted once before, and the criteria had not changed.

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

A **motion** was made by Drexelius / Braddell to **GRANT** the request for a 492 sq. ft. area variance for garage space to construct a 36' x 36' x 21' detached garage at 2343 Staley Road. **NO COMMERCIAL USE.**

**Roll Call:**

Ayes: Braddell, Harris, Mesmer, Phillips, Drexelius

Noes: None

Carried

**Rationale:**

1. This detached building will store his tractor, some farm equipment and vehicles. This variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.
2. The detached garage is in general conformity with other properties in the area.
3. This garage is a reasonable size and is a reasonable use of residential property not for any commercial use.

**4) 209 Hennepin Road – Kelly and Eric Finkowski**

This property is zoned R1E. The applicant is requesting to locate a shed in the same location as a previously removed smaller shed. The new 12' x 16' x 12' shed is replacing a 12' x 8' shed that was located 3 ft. off the side lot line and 2 ft. off the rear lot line. Town Code §407-142.A states; 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. In this case, the storage structure is 12 ft. tall making the required setback from side and rear lot lines 12 ft. The applicant is requesting a 3 ft. side yard setback making a 9 ft. side yard setback variance necessary. The proposed rear yard is 2 ft. making a 10 ft. side yard setback variance necessary. It is important to note that the aerial view of this lot shows a fenced swimmingpool and it is a corner lot, creating further hardship for the shed placement.

Appearing before the Board was Eric Finkowski who resides at 209 Hennepin Road. Mr. Finkowski explained he had replaced the old shed with a new shed. He obtained a permit after it was delivered and placed in the same location as the old shed. When the town finally came out to inspect the shed the told him it was too close to the lot lines. Mr. Finkowski stated that his yard is small because of the pool and the corner lot setbacks.

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

A **motion** was made by Drexelius / Braddell to GRANT the request for a 9 ft. side yard setback variance for the location of a shed in the required 12 ft. (height of building) side yard setback at 209 Hennepin Road.

**Roll Call:**

Ayes: Harris, Braddell, Phillips, Drexelius, Mesmer

Noes: None

Carried

A **motion** was made by Drexelius / Braddell to GRANT the request for a 10 ft. rear yard setback variance for the location of a shed in the required 12 ft. (height of building) rear yard setback at 209 Hennepin Road.

**Roll Call:**

Ayes: Braddell, Drexelius, Phillips, Mesmer, Harris

Noes: None

Carried

**Rationale:**

1. The variance was granted because this shed was a replacement of an older shed that was under the older Town Code setback regulations. The inspection came after the new setback regulations were in place. The location of the shed would not cause a detriment to nearby properties.
2. The shed is in general conformity with adjacent properties and is in keeping with the general nature of the neighborhood.
3. Corner lots often create hardships for property owners with setbacks for accessory structures in the rear yards.

**5) 2489 Fix Road – Taylor Kaufman**

This property is zoned R1A. The applicant is requesting to construct a 30' x 50' x 17' detached storage building to be located 10 ft. from the east lot line. Town Code §407-142.A states; 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 building height is 17 ft. The applicant is requesting to locate the building 10 ft. from the east lot line making a 7 ft. side yard setback variance necessary.

Appearing before the Board was Taylor Kaufman who resides at 2489 Fix Road. Ms. Kaufman said she would like to put up a detached storage building. She was requesting a variance to locate the building closer to the lot line to avoid the old septic system in the rear yard. Board Member Phillips asked if the shed shown on the survey was going to be moved and she replied that it would be removed.

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

A **motion** was made by Braddell / Drexelius to GRANT the request of a 7 ft. side yard setback variance on the east lot line from the required 17 ft. (height of the building) required side yard setback for the location of a 30' x 50' x 17' detached storage building at 2489 Fix Road. NO COMMERCIAL USE.

**Roll Call:**

Ayes: Harris, Braddell, Mesmer, Phillips, Drexelius

Noes: None

Carried

**Rationale:**

1. The variance was granted because it is a reasonable and compatible way to alleviate storage problems for the homeowner.
2. The proposed storage structure will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.
3. This structure is consistent with other accessory structures in the neighborhood.

**6) 60 Cedar Ridge Circle – Ann Scanio**

This property is zoned R1D. The applicant is requesting to locate a 10' x 14' x 10' shed 8 ft. from the rear lot line. Town Code §407-142.A states; 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 building height is 10 ft. tall. The applicant is requesting to locate the building 8 ft. from the rear lot line making a 2 ft. rear

yard setback variance necessary. Note: there is a private drainage easement in the rear yard that should be avoided if possible.

Appearing before the Board was Anthony Scanio who resides at 60 Cedar Ridge Circle. Mr. Scanio explained he was looking to locate a shed in his rear yard and noticed on his survey that there was a private drainage easement that went through the back section of his yard where the shed should be located. Mr. Scanio is requesting a variance to avoid the easement and locate the shed behind the easement area.

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

A **motion** was made by Phillips / Braddell to GRANT the request for a 2 ft. rear yard setback from the required 10 ft. (height of the building) rear yard setback for the location of a 10' x 14' x 10' shed at 60 Cedar Ridge Circle.

**Roll Call:**

Ayes: Harris, Braddell, Phillips, Drexelius, Mesmer

Noes: None

Carried

**Rationale:**

1. This variance for the shed location will alleviate the hardship created by the drainage easement in the rear yard.
2. The request to locate the shed in the rear yard is reasonable and compatible with other shed locations in the neighborhood.
3. The shed location will not create a detriment to nearby properties.
4. The request of a two-foot variance is not substantial in a yard of this size.

**7) 4967 East River Rd – Jeffrey Morgan**

This property is zoned R1C. The applicant is requesting to construct an open carport in front but not attached to his garage. The 18' x 19' open carport will provide cover for one car, be the same height as the existing garage and remain open on all sides. Town Code 407 Schedule I sets the required front yard in R1C district at 50 ft. The proposed carport will be at 43 ft. making a 7 ft. front yard setback variance necessary. Also, the applicant is hoping to keep the carport in line with the existing garage which is already in the required 12 ft. side yard setback. To maintain the same building line, a 6 ft. side yard setback variance from the east side lot line would be necessary.

Appearing before the Board was Jeffrey Morgan who resides at 4967 East River Road. Mr. Morgan explained that he had to cut down a big tree in his front yard that used to provide shade over his driveway. He is looking to construct a roof from his existing garage such as a carport to provide shade

on the vehicles. The carport structure would remain open on all sides so not to block any views the neighbors may have.

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

A **motion** was made by Drexelius / Harris to GRANT the request a 7 ft. front yard setback variance from the required 50 ft. for an **open** carport in front of the detached garage at 4967 East River Road.

**Roll Call:**

Ayes: Mesmer, Harris, Braddell, Phillips, Drexelius

Noes: None

Carried

A **motion** was made by Drexelius / Harris to GRANT the request for a 6 ft. side yard setback from the required 12 ft. side yard setback to locate a carport in line with the existing detached garage at 4967 East River Road.

**Roll Call:**

Ayes: Phillips, Harris, Braddell, Mesmer, Drexelius

Noes: None

Carried

**Rationale:**

1. The variance request of 7 ft. out of the required 50 ft. is not a substantial request.
2. The granted carport is not to be enclosed so it will not affect the street views of neighboring properties.
3. The request of the carport will provide shade for the driveway and will not produce an undesirable change in the character of the neighborhood.

A **motion** by Drexelius / Braddell to suspend the rules to hear a **Variance Extension** request for 103 Colonial Drive, approved on October 6, 2022 for the location of a storage building.

A **motion** was made by Harris / Drexelius to GRANT an Extension to the variances granted on October 6, 2022 for a 4 ft. side and rear yard setback to locate a 16' x 20' x 11' storage shed in the rear yard of 103 Colonial Drive.

**Roll Call:**

Ayes: Mesmer, Phillips, Drexelius, Harris, Braddell

Noes: None

Carried

**OLD BUSINESS**



**NONE**

**APPROVE MINUTES:**

A **motion** was made by Harris / Phillips to Approve the March 2, 2023 ZBA Minutes with corrections to 2988 Love Road to add "NO COMMERCIAL USE".

**Roll Call:**

Ayes: Mesmer, Phillips, Harris, Braddell, Laurendi

Noes: None

Carried

**OTHER MINUTES AVAILABLE FOR REVIEW**

**Board of Architectural review** –Jan. 17, 2023, Feb. 21, 2023

**Planning Board Agenda** – Mar. 13, 2023

**Planning Board Minutes** – Jan. 9, 2023

**Town Board Agenda** – Regular Meeting # 4, Mar. 6, 2023, Regular Meeting # 5, Mar. 20, 2023

**Town Board Minutes** – Regular Meeting #3, Feb. 6, 2023

A **motion** was made by Harris/ Braddell to adjourn the meeting at 8:05 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.