

**MINUTES OF A MEETING OF THE
VILLAGE OF AVON ZONING BOARD OF APPEALS
TUESDAY, JULY 15, 2014
7:00 PM; VILLAGE HALL, WHITNEY ROOM**

I. ATTENDANCE

Daniel Freeman, Chairman (7:12 PM)
James Gerace
Richard K. Hite
Barbara Sadden
Ernest Wiard

QUORUM, 5 Present, 0 Absent

Others:

Reid A. Whiting, Village Attorney
Anthony J. Cappello, Code Enforcement Officer
Kurt Rappazzo, MRB Group

Joseph Montesano, PO Box 186, Avon – Applicant
Scott Baker, 400 Rochester Street
Christopher Coyne, 181 High Street

Planning Board

Paul M. Drozdziel, Chairman
Patrick McCormick
Laura Nobles
Kevin O’Donoghue
Bonnie Taylor-Davis
William Wall
Vacant Seat

II. MONTESANO PUBLIC HEARING

Hite sat in as Chairman until Freeman arrived. He opened the meeting at 7:10 PM and read the NOTICE OF PUBLIC HEARING as published in The Livingston County News, the official newspaper of the Village of Avon, Thursday, July 3:

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that a public hearing will be held before the Zoning Board of Appeals of the Village of Avon on Tuesday, July 15, 2014, at 7:00 p.m. in the Whitney Room at the Village Hall, 74 Genesee Street, Avon, New York on the following matter:

Application of Joseph Montesano for an area variance to allow the sale of a portion of Lot 4 of his North Avenue/Rochester Street subdivision resulting in a remaining lot having less than the minimum required building lot area of 20,000 square feet.

The Zoning Board of Appeals will, at the aforesaid time and place, hear all persons in support of this application or objections thereto. Persons may appear in person or by agent or attorney. The application for subdivision may be reviewed at the Village Hall.

Dated June 26, 2014

By Order of the Zoning Board of
Appeals of the Village of Avon

Applicant: Joseph Montesano
PO Box 186
Avon, NY 14414

Property Location: 420 Rochester Street (Lot 4)

Zoned: One Family Residential (R-1)

Difficulties: Code requires 20,000 SF minimum lot size

Sale (proposed): Wedge-shaped parcel of land on the south side of 420 Rochester Street, Lot 4. 60-feet of road frontage on Rochester Street, tapering to a point at the east end of the parcel. Sale leaving Lot 4 with 16,000 SF more-or-less.

Sale to: Scott Baker
400 Rochester Street
Neighbor to the south

Rationale & History

Montesano introduced Baker and explained the rationale behind his area variance request. Baker's driveway turn-around encroached on his land. Baker also had a shed at the rear of his property that was virtually on the property line.

Montesano pointed out his Lot 4 had 161.14 feet of frontage so, he felt he could afford to sell Baker 60 feet of frontage – his lot, he reasoned, would still have more than 100 feet of frontage.

Was Montesano asking the Board to "spot-zone" the property for him? Wiard asked.

No, Montesano responded.

Hite asked how Montesano's request had reached them. The Planning Board would typically make a recommendation first, he added.

Sadden said she could use more history, Montesano originally had six lots in his subdivision? she asked. And, how had Baker put in a driveway and shed on land that wasn't his? she followed-up.

Montesano's lot was wooded, Montesano explained, adding the bulldozer just pushed back a bit too far.

Were there any tax repercussions associated with Montesano's request? Sadden wondered.

Montesano didn't think so. If approved, Lot 4 would still be a building lot and the wedge he hoped to sell to Baker would be merged with Baker's lot.

Had the request been made to resolve a property line dispute? Hite asked.

Freeman asked just how far Baker's driveway turn-around encroached on Montesano's land.

The turn-around didn't actually encroach on Montesano's land, Baker responded, adding it was cut right at the line.

Were there any other substandard lots in the area? Hite asked.

Baker could buy the whole lot, Drozdziel said. If he wanted a little more elbow room, that would give him a lot more elbow room.

Why 60 feet?

How did you arrive at 60 feet? Hite asked.

Montesano said he wanted to leave Lot 4 with 100 feet of frontage.

But why did it have to be 60 feet? Freeman asked. Couldn't Montesano have had the 20,000 SF minimum lot size, if he'd sold Baker something less than 60 feet of frontage?

They still would have wound up with 17,000 SF or 17,500 SF, Montesano responded.

Two lots would be created by the subdivision Montesano had proposed, Hite noted.

They'd only be creating one lot, Montesano disagreed.

They'd be creating two substandard lots, Hite maintained – the 16,000 SF Lot 4 Montesano would be left with and the wedge-shaped lot with 60 feet of frontage that he'd be selling to Baker.

Statutory Sequence

The Board should go through the statutory sequence, Whiting said.

For a Zoning Board of Appeals to grant a variance from the dimensional and area requirements of a zoning ordinance, it must find that the benefits to the applicant of the requested variance outweigh the detriment it would cause to the health, safety and welfare of the neighborhood. The Board must weigh the benefits of the requested variance to the applicant against five factors:

1. Would an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?
2. Could the benefit sought by the applicant be achieved by some method feasible for the applicant to pursue other than an area variance?
3. Was the requested area variance substantial?
4. Would the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Was the alleged difficulty self-created? This consideration should be relevant to the decision of the Board of Appeals, but not preclude the granting of the area variance.

Many of the lots in Avon Commons, the Planned Residential Development District (PRDD), behind TOPs Friendly Markets were less than 20,000 SF, O'Donoghue observed.

Baker could move his driveway turn-around and shed to eliminate any encroachment, Hite suggested.

That brought him back to the question: did Baker need 60 feet of "wobble room?" Freeman asked.

When he was clearing Lot 4, Montesano recalled he had approached Baker and asked him if he wanted to buy the lot. Baker had said, "no," so, Montesano asked him if he wanted a piece of it for . . . wobble room.

The sale would reduce Lot 4 by 20 to 25 percent, Whiting pointed out, taking the lot from .481 of an acre down to about .367 of an acre.

He was thinking back to Valley Lane and Pine View Heights, Montesano told Board members. There were a lot of 100 feet X 120-foot lots in those subdivisions and there were nice houses there.

Was a 25 percent reduction "substantial?" Hite asked. The question in his mind was that 25 percent of anything was substantial.

I'm not screaming about it, Montesano asserted, adding a lot of potential buyers wouldn't be screaming about it either.

A lot of people don't want a big lot, Gerace pointed out.

Section 7-712B of Village Law said to grant the "minimum variance necessary," Whiting reiterated, suggesting the Board should first seek to protect the health, safety and welfare of the neighborhood.

The "minimum" would be moving your driveway and shed and going on about your business, Hite declared.

What would be the minimum frontage that it could come down to and still accommodate your wiggle room? Freeman asked.

Would 30 feet do it? Drozdziel asked.

Probably not, Baker answered.

Is the area variance Montesano requested "substantial?" Whiting asked. The Board should consider granting the minimum variance possible to preserve the character of the neighborhood.

The alleged difficulty is self-created, Hite stated.

But, Sadden said she wasn't sure how granting the variance would affect the character of the neighborhood, if the property across the street were commercial.

Wiard said he had nothing further.

Freeman confirmed no one else and any further comments.

MOTION: Sadden moved to approve Montesano's area variance application, allowing him to sell 60 feet of frontage to Baker and retain Lot 4 as an approved building lot. The area sold to Baker would be merged with Baker's lot. Seconded by Gerace. Voting in favor were: Freeman, Gerace, Hite, Sadden and Wiard. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

III. ADJOURNMENT

MOTION: Wiard moved for adjournment at 7:53 PM, seconded by Gerace. Voting favor were Freeman, Gerace, Hite, Sadden and Wiard. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

Gary Margiotta
Deputy Clerk