

Town of Scipio
3705 State Route 34
Scipio Center, NY 13147

Town of Scipio ZBA June 7, 2022 Draft Meeting Minutes

Members present: Keith Welch, Greg Otis, Zane Cramer, Eric Devin, Howard Nelson

Guests: Cathy Komarisky, Gary Mutchler, Jeff Eaton and Bob Gage

Meeting was called to order at 7:03 PM

1. Motion to approve amended Agenda. The amendment was the submission of a Draft Resolution in place of Agenda item #5; (Otis/ Cramer) 5-0
2. Motion to approve Minutes from 5/3/2022 (Cramer/ Nelson) 5-0
3. There were no issues presented by property owners
4. Motion to adopt Resolution # 2022-1: see attached file (Otis/Cramer).The Resolution answers Dollar General's legal rebuttal to variances needed. Dollar General would need to own more land and reduce the size of proposed structure. Motion made to adopt resolutions "as fact" and deny request for variances. 5-0
5. Covid protocol was discussed. No action from this board would be binding. Any ideas should be presented to the Town board and then adopted as a hybrid plan for any other meetings. The State protocols will be followed for all meetings.
6. A boat excursion is planned for Friday, June 17, for any interested parties to view Scipio from the lake in hopes of better understanding the Town's relationship with Owasco Lake.
7. Materials were distributed for a variance request on construction projects at Fire lane 17. The proposed set back of 37.5 feet is less than the zoning law of 50 feet requires. Members were encouraged to visit the site. Vote will likely follow a Public Hearing at the July 5 meeting.

Motion to adjourn at 8:00 PM. (Otis/Cramer) 5-0

The next scheduled meeting is July 5, 2022 7:00 PM at the Town Offices

Keith R. Welch

Chair

**TOWN OF SCIPIO ZONING BOARD OF APPEALS
RESOLUTION No. 2022-1**

**DECISION ON AREA VARIANCE APPLICATION
FRANKLIN LAND ASSOCIATES, LLC**

At a regular meeting of the Zoning Board of Appeals of the Town of Scipio (the "Board") held on June 7, 2022, the following resolution was duly moved, seconded and adopted by the affirmative vote of a majority the Board:

WHEREAS, the Board has received an application from Franklin Land Associates, LLC ("Applicant") seeking two area variances related to maximum lot coverage and maximum building size (the "Application") in connection with the proposed development of a portion of certain real property situated in the Town of Scipio (the "Town") and identified as tax parcel no. 174.00-1-3.1 (the "Property"); and

WHEREAS, pursuant to Section 17.03(D)(3) of the Town of Scipio Zoning Ordinance (the "Zoning Ordinance"), and following publication of notice in the Town's official newspaper in conformance with the law, the Board conducted a public hearing on the Application on April 5, 2022; and

WHEREAS, citizens in attendance at the public hearing voiced concerns regarding potential impacts of the Application including, among other things, stormwater issues, whether there would be any benefit to the community, sacrifice of rural character, and consistency in enforcement of the Zoning Ordinance; and

WHEREAS, following the close of the public hearing, the Board received a letter from Applicant's attorneys (the "Couch Letter") proposing to include a deed restriction as part of its Application for the purpose of mitigating the severity of the requested variances; and

WHEREAS, the Board has duly weighed the Application, taking into account the concerns voiced at the public hearing and Applicant's proposed deed restriction, under the following criteria, as required by Section 17.03(D)(1) of the Zoning Ordinance and Town Law § 267-b:

- (1) 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;
- (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) whether the requested area variance is substantial;
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) whether the alleged difficulty was self-created; and

NOW, THEREFORE, BE IT RESOLVED that based on careful consideration of the above factors, the Board hereby issues the following findings of fact:

1. An undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of the area variance. Most of the properties in the surrounding neighborhood conform with the Town's maximum lot coverage requirements. The requested lot coverage variance of 49.3% is substantially in excess of the 20% maximum lot coverage permitted under the Zoning Ordinance. Given the agricultural character of the neighborhood, the high density development proposed in the Application would be out of character with surrounding properties and would produce an undesirable change. Even taking the proposed deed restriction into consideration, as requested by the Couch Letter, the Board still finds that granting the variance would produce an adverse impact on the character of the neighborhood. As the Couch Letter notes, the purpose of the dimensional requirements set forth in the Zoning Ordinance is "to preserve . . . open space, provide opportunities for housing and develop according to the traditional character found in the Town, using flexible regulations for density and lot dimensions." Imposing a deed restriction to prevent development of a portion of an adjacent parcel does not further these goals. To the contrary, a deed restriction is far from flexible and would inhibit development of the encumbered parcel far beyond the life of the project proposed in the Application. Not only would the deed restriction have a direct detriment to the value of the neighboring parcel to be encumbered, it also provides no benefit to surrounding properties that could not otherwise be attained through Applicant's compliance with the Zoning Ordinance. Lastly, the Couch Letter erroneously conflates the standard of review for a special use permit with the appropriate standard for area variance review. An area variance is entitled to no presumption of harmony.
2. Applicant may achieve the benefit sought by purchasing a larger portion of the parcel so that the proposed construction conforms with the Zoning Ordinance. Adequate space exists on the Property to permit construction to be completed as proposed without the need for a lot coverage variance. Applicant's assertion that compliance with the Zoning Ordinance "unduly increases project costs without benefit to the project" is unavailing. No evidence that Applicant is unable to acquire sufficient land to comply with the Zoning Ordinance has been presented to the Board. The Board has considered the Couch Letter's assertion that an area variance conditioned on the proposed deed restriction is more consistent with the Town's comprehensive plan than strict compliance with the Zoning Ordinance. The Board finds that the proposed deed restriction is inconsistent with the comprehensive plan insofar as it would hinder managed community growth by rendering 2.25 acres of land in the Town undevelopable. The benefit of preserving open space can be feasibly achieved without the need for an area variance.
3. The requested area variances are substantial. The Board considers the 29.3% variance

from the maximum allowed lot coverage to be substantial. A deed restriction on development of an adjacent parcel that the Applicant does not own does not change the fact that a 29.3% lot coverage variance will be required.

4. The proposed variance is likely to have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Concerns were raised during the public hearing regarding potential stormwater impacts on neighboring properties that would result if the proposed variance were granted. The deed restriction proposed in the Couch Letter would not preserve the physical and environmental conditions of the portion of the Property that Applicant proposes to purchase. The requested variance would still create a parcel with 49.3% lot coverage in a primarily agricultural area.
5. The alleged difficulty is self-created. There is no evidence that the Applicant is unable to acquire a sufficient number of acres of the Property to conform with the Zoning Ordinance. Although this factor alone is not determinative upon the Board's decision, the clear extent to which Applicant's alleged difficulty is self-created cannot be overlooked.

BE IT FURTHER RESOLVED that the Board hereby DENIES the Application in its entirety based on the foregoing findings of fact; and

BE IT FURTHER RESOLVED that the Chair of the Board is directed to file this Resolution with the Town Clerk no later than five (5) business days after its adoption, with a copy thereof to be mailed to the Applicant; and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

The question of the foregoing Resolution adopting these findings of fact was made by Board Member GRIG OTIS, seconded by ZANE CRAMER, and duly put to a vote as follows:

Keith Welch	Voting	<u>Aye</u> /Nay
Greg Otis	Voting	<u>Aye</u> /Nay
Zane Cramer	Voting	<u>Aye</u> /Nay
Eric Devin	Voting	<u>Aye</u> /Nay
Howard Nelson	Voting	<u>Aye</u> /Nay

The resolution was thereupon declared duly adopted.

Dated: 6/8/22

Keith P. Welch