

## ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, April 10, 2014, at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present

*Mark I. Fisher, Chairman*  
*Michael Strone*  
*Paul Katz*  
*Ernest Fiore*  
*Steven Lowenthal*  
*Paul Valentine*

Members Absent

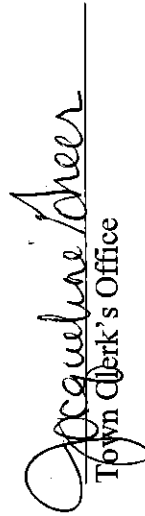
*William Harold*

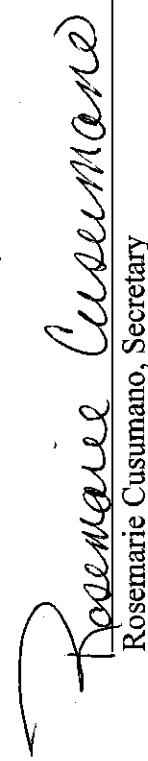
The Chairman called the meeting to order at 8:00 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z13-006	Vasilios Skamangas	223	39	Heard – Closed – Findings being prepared
Z13-026	Michaelangelo Iannacchino	1031	1	Heard – Closed - Findings being prepared
Z13-032	Robert Luiso	281	10	Variance Denied
Z14-001	Sally & Steve Paridis	951	11	Heard – Adjourned to the May Meeting
Z14-004	249 Halstead Avenue Properties	131	20, 21-23, 53, 54	Re-Opened – Adjourned to the May Meeting
Z14-005	550 Halstead Ave Multi-Family	92	15	Heard – Adjourned to the May Meeting
Z14-006	WestMed Parking Attendant Booth	692	1	Variance Granted
Z14-008	Charles Oestreicher	565	16	Heard – Adjourned to the May Meeting
Z14-009	Jonathan Crayer	519	6	Heard – Withdrawn without prejudice
Z14-010	Jeremiah & Noreen Harrington	214	117	Heard – Adjourned to the May Meeting
Z14-011	Alfred & Margaret Kelly	563	13	Not Heard – Adjourned to the May Meeting

The next meeting was scheduled to May 8, 2014.

There being no further business to come before the Board, on a Motion duly made and seconded, the meeting was declared adjourned.

  
 Town Clerk's Office

  
 Rosemarie Cusumano, Secretary

**BOARD OF ZONING APPEALS  
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z13-032

Date: April 10, 2014

Property Owner: Robert Luiso

Property Address: 33 Bentay Drive

Block 281 Lot 10

WHEREAS, the applicant, the property owner, filed an application for a proposed subdivision and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Robert Luiso filed an application for a variance in connection with seeking a subdivision for the property. The property is located in an R-75 Zoning District and pursuant to §235-9(B) of the Table of Dimensional Regulations of the Town/Village of Harrison Zoning Ordinance the minimum required lot width is 70 feet. Also as per §235-4 the dimensions are measured from the side lot line along a line parallel to the street line at the required minimum front yard depth. The minimum lot width must be maintained from the minimum front yard setback for a distance of not less than 35 feet toward the rear lot line. The proposed lot width at the front setback line is approximately 51 feet and appears to increase to approximately 57 feet at the 35 foot mark, thus requiring a variance. Also as per §235-33 the minimum lot width at the front lot line in any residence district shall not be less than 75% of the required lot width at the required minimum front yard, but in no case shall it be less than 50 feet. The required front lot width is 52.5 feet the actual width is 49.25 feet thus requiring a variance of 3.25 feet; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on November 14, 2013, January 9, 2014 and March 13, 2014 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present or indicated that they had listened to tapes of the meeting: Paul Katz, Ernest Fiore, Mark Fisher, Michael Strone, Steve Lowenthal and Paul Valentine.

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and numerous neighbors appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

*Z13-032  
Luiso  
4/10/14*

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) 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 variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

The Board found that:

1. The property is an irregularly shaped lot containing approximately 17,351 square feet that is currently improved with a two story residence, a deck and patio and a shed located at the rear of the property. The front of the property borders on Bentay Drive, which is a dead end street; the side of the property on which a new house is proposed to be constructed borders on West Street and the rear of the property borders on the New Haven Railroad tracks.
2. Applicant is seeking this variance in order to facilitate a subdivision of the property. The variance is needed in order to allow construction of a new two-story residence that would border both Bentay Drive and West Street. As this is a corner lot, applicant, as permitted under the Code, has designated West Street as the front of the house for purposes of satisfying the setback requirements. However, from a practical standpoint, the actual front of the proposed house faces Bentay Drive as the driveway exits onto Bentay Drive and the front entrance to the house also faces Bentay Drive.
3. This is the third time that a variance has been sought for a subdivision of the property. Both of the prior applications were denied. The most recent application was made by applicant in 2010 and was denied on July 8, 2010 (Calendar Z10-021). The current application seeks the same variance previously sought in 2010. The 2010 application was first filed with the Planning Board for sub-division approval and the Planning Board in turn referred the application to the Zoning Board with a negative recommendation. The current application was filed initially with the Zoning Board as a variance application but in any event would still require sub-division approval by the Planning Board as a subdivision in the event that the variance is granted.

4. We are cognizant of the requirement for us to follow the balancing test in determining whether to grant this variance and the remainder of these findings are addressed to those considerations.

Z13-032  
Luiso  
4/10/14

**The benefit to the applicant vs. the detriment to the health, safety and welfare of the neighborhood or the community**

5. The benefit to the applicant in obtaining the variances is to maximize his economic return from the property through the construction of an additional residence. Applicant admitted at the hearing that this was his motivation for the variance although this would appear to be self-evident.
6. Bentay Drive is a narrow dead end street that ends at its intersection with West Street. The proposed new house is located at the end of Bentay Drive and Bentay Drive narrows as it approaches the West Street intersection. Parking is permitted on both sides of Bentay Drive and there is insufficient width to allow cars going in opposite directions to pass each other in the event a car is parked on the street. Neighbors have reported that there have been problems in the past with respect to larger vehicles gaining access to Bentay Drive. The street is plowed by the Town's small snow plow as there is no room for the large plows to maneuver on the street. Neighbors also reported that the Town's recycling truck has on at least one occasion been unable to gain access to houses as a result of a gardening truck being parked on the street. In 2010 a car accident occurred directly in front of applicant's lot involving a parked car and a vehicle attempting to enter the street. Construction of the proposed house would only heighten the possibility that there will be cars parked in front of that new house and serve to make it more difficult for a car to turn onto Bentay Drive from West Street. The potential safety issue is also impacted by the fact that there is a nearby school bus stop. In addition, granting of the variance would only serve to increase the number of vehicles in the neighborhood and thereby heighten the safety concerns on this narrow dead end street.
7. Applicant is essentially attempting to squeeze an additional dwelling unit into a lot that does not, under the requirements of the Zoning Ordinance, allow for two dwellings of the size of the current house and the new house that is proposed to be built. We are concerned that the granting of this variance would create a precedent that would permit other property owners to develop lots that do not satisfy the dimensional requirements of the Zoning Ordinance and would therefore create a detriment to the community.

**Whether an undesirable change will be produced in the character of the neighborhood**

8. The property is irregularly shaped and the portion of the property on which the new house is proposed to be constructed is much narrower than the remainder of the parcel. As set forth above, applicant has designated the portion of the proposed subdivided lot facing West Street as the front yard. As a result of the designation of West Street as the "front" yard, the portion of the property adjacent to Bentay Drive becomes a side yard. The dimensional requirements for a front yard setback are 30 feet as compared

Z13-032  
Luiso  
4/10/14

to 15 feet for a side yard. The proposed new house provides for a side yard setback from Bentay Drive of 15.2 feet.

9. There are approximately 26 houses on Bentay Drive and the street and two cul-de-sacs that are located off Bentay Drive. All of those houses are set back from the street substantially further than the 15 feet proposed for the new house and the construction of the new house 15 feet from the street is out of keeping with the character of the neighborhood and would create an undesirable change in the character of the neighborhood.

10. The portion of the property on which the new residence is proposed to be constructed has been viewed as a buffer area for the neighborhood. The elimination of that buffer area would also create an undesirable change in the character of the neighborhood.

**Whether the benefit sought by applicant can be achieved by some method feasible for the applicant to pursue other than a variance**

11. Applicant requires a variance in order to achieve the benefit derived from building the proposed house on the property. However, applicant currently enjoys the reasonable use of the property, including use of the shed that is located within the required rear and side yards (on June 11, 2009 we granted a variance with respect to the shed (Calendar No. Z09-006)).

**Is the variance substantial**

12. The lot width variance represents more than a 27% deviation from the requirements of the Zoning Ordinance. Combined with the other factors cited above, particularly those relevant to the impact of the granting of the variance on the surrounding neighborhood, we find that the variance is substantial.

**Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood**

13. For the reasons cited above in paragraphs 6, 9 and 10, we find that the granting of the variance will have an adverse effect and impact on the physical conditions of the neighborhood.

**Is the difficulty self-created**

14. Applicant acquired this property in 2001 and is charged with full knowledge of the provisions of the Zoning Ordinance. Furthermore, at that time a previous application for a subdivision similar to the one currently being sought had already been denied. Finally, the desire to subdivide the property to maximize the economic return is a volitional act by the property owner. Accordingly, applicant's alleged difficulty is self-created.

15. The Planning Board, which has the responsibility for subdivision approval, referred applicant's prior application to us with a negative recommendation. As set forth above, the current application was not initially filed with the Planning Board. However, in order for the house to be constructed the Planning Board must approve the subdivision. Since the current application is identical to the prior application, there is substantial doubt as to whether the Planning Board will approve the subdivision. We accord substantial weight to the recommendations of the Planning Board in the area of subdivision approvals and are loathe to grant a variance to facilitate a subdivision where the Planning Board has made a negative recommendation.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to deny the requested variances.

NOW THEREFORE BE IT RESOLVED, that the application for variances from the lot width and minimum lot width at the front lot line requirements of the Zoning Ordinance be, and the same is hereby denied.

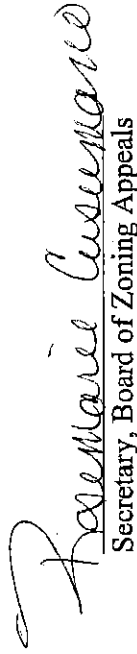
Foregoing Resolution submitted by Michael Strone, seconded by Paul Valentine at the April 10, 2014 meeting.


ADOPTED: AYES: Mark Fisher, Paul Katz, Michael Strone, Steven Lowenthal and Paul Valentine

NAYS: Ernest Fiore

ABSTAINED: None

ABSENT: William Harold

  
Secretary, Board of Zoning Appeals

  
Chairman, Board of Zoning Appeals

Z13-032  
Luiso  
4/10/14

RECEIVED  
2014 APR 14 PM 3:58  
PLANNING  
BOARD  
HARRISON, N.Y.

***THIS IS NOT A BUILDING PERMIT.*** A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department at (914) 670-3054, 670-3055, or 670-3056.

Z13-032  
Luiso  
4/10/14

**BOARD OF ZONING APPEALS  
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z14-006

Date: April 10, 2014

Property Owners: Westchester Medical Group, P.C.

Property Address: 210 Westchester Avenue

Block 692 Lot 1

WHEREAS, the applicant, the property owner, applied for a Building Permit in order to construct a Parking Attendant Booth and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements, and

WHEREAS, Westchester Medical Group filed an application for a variance for a prefabricated Parking Attendant Booth. This property is located in an SB-O Zoning District and pursuant to §235-12-B of the Table of Dimensional Regulations of the Zoning Ordinance of Town/Village of Harrison the minimum required front yard setback is 50 feet. The proposed prefabricated Parking Attendant Booth is indicated to have a front yard setback of 11.5 feet thus requiring a variance of 38.5 feet; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on March 13, 2014 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were either present in person or indicated that they had listened to tapes of the meeting: Steven Lowenthal, Paul Katz, Ernest Fiore, Michael Strone, Paul Valentine and Mark Fisher; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

*Z14-006  
WestMed Parking Attendant Booth  
4/10/14*



- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) 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 variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to consider the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. The variance is being requested in order to facilitate the parking entry system at the western end of the medical facility so as to protect the parking attendant protection from inclement weather.
2. The front yard at the western end of the facility borders on Westchester Avenue and the Cross Westchester Expressway and the closest properties are commercial in nature, are located a substantial distance away and are shielded from view by substantial screening. In addition, the booth will not be visible from any adjacent residential property. Accordingly, there will be no undesirable change in the neighborhood or any detriment to nearby properties created by the erection of the booth.
3. The booth is approximately four-feet by six feet and will be erected on a concrete slab. As a result of the relatively small size of the booth and its location, the erection of the booth will not have an adverse impact on the physical or environmental conditions in the neighborhood.
4. The Planning Board has referred this matter to us with a positive recommendation.

NOW THEREFORE BE IT RESOLVED, that the application for a variance to permit construction of a pre-fabricated parking attendant booth within the required front yard setback in accordance with the plans filed with this application be and it hereby is granted subject to following:

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

Z14-006  
WestMed Parking Attendant Booth  
4/10/14

This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if the applicant shows good cause and, if in the Board's judgment, the facts and circumstances, which existed at the time of the original application, have not materially changed.

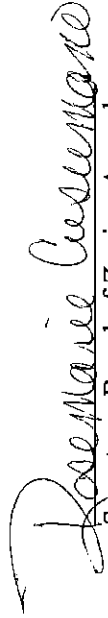
Foregoing Resolution submitted by Michael Strone, seconded by Paul Valentine at the April 10, 2014 meeting.

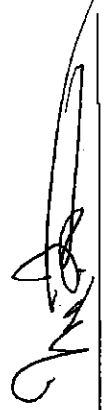
ADOPTED: AYES: Mark Fisher, Ernest Fiore, Michael Strone, Steven Lowenthal and Paul Valentine

NAYS: Paul Katz

ABSTAINED: None

ABSENT: William Harold

  
Secretary, Board of Zoning Appeals

  
Chairman, Board of Zoning Appeals

**THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department at (914) 670-3054, 670-3055, or 670-3056.

RECEIVED  
2014 APR 14 PM 3:58  
TOWN OF WEST MEDFORD  
BUILDING DEPARTMENT

Z14-006  
WestMed Parking Attendant Booth  
4/10/14