



Trough Heisler
ATTORNEYS AT LAW

MEMORANDUM

TO: Code Enforcement Officer, Town of Long Island
FROM: Chris Neagle *CSN*
DATE: April 9, 2020
RE: Carmen Robertson Garfield Street lots

Summary

Carmen Robertson wants to create two lots from the land she owns on Garfield Street so that each of the two residences on her land will be on a separate lot. The Town real estate tax assessor lists three lots for Carmen shown as Lots 315, 316 and 318 on the Town's Map 1 attached as Exhibit 1. An enlargement of Map 1 showing her neighborhood is attached as Exhibit 2. Carmen's land is made up of many smaller lots shown on two old subdivision plans recorded in the Registry of Deeds in 1889 (Plan Book 6, Page 49) and 1914 (Plan Book 12, Page 89).

Lot 315 has her primary residence on it and Lot 318 has her son's residence on it. Carmen wants to combine Lots 315 and 316 into a single lot for her residence on them and wants to separate Lot 318 with her son's residence from her other lots. She appears to need a variance from the Board of Appeals.

History of Robertson Lots

1992: Carmen acquired vacant land at 19 Garfield Street (**Lot 318**) from Alice Jones with a deed recorded in Book 10271, Page 191. The deed refers to a survey plan (not yet located) stating that the lot contains about 46,000 square feet.

July 1, 1993: The Town of Long Island broke off from the City of Portland to become its own municipality and adopted a Zoning Ordinance more or less in its current form.

1997: Carmen acquired her parents' residence at 17 Garfield Street (**Lot 315**) with a deed from her mother Lillian Gomez recorded in Book 13375, Page 244. The land has about 17,000 square feet. Carmen lives in this residence.

2000: Carmen's son William Camden received a building permit from the Town allowing him to build a new residence on Lot 318. See Exhibit 3. William has constructed a residence on Lot 318 that he currently lives in.

2012: **Lot 316** is on Garfield Road between Lots 315 and 318. Carmen acquired Lot 316 from her brother Peter Gomez with a deed recorded in Book 29807, Page 124. The land has about 5,700 square feet and has been used with the residence on Lot 315.

Town of Long Island Zoning

Lots 315 and 316 are in the Island Business Zone and Lot 315 is partially within the Shoreland Zone. The minimum lot size in the IBZ for a new single family residence is 30,000 square feet. Section 3.9(E)(1). The Shoreland Zone has no minimum lot sizes for lots not adjacent to tidal areas and lots on the water only require 30,000 square feet for residential development. Section 4.15(A)(1)(a).

Lot 318 is in the Island Residential 1 District. The minimum lot size is 60,000 for a single family residence.

Non-conforming Lots: "Non-conforming lots" are lots that existed before zoning regulations that are smaller than the minimum lot sizes for the districts they are now located in. Sections 6.5(C) and 4.12(E). Lot 315 has 17,000 square feet and needs 30,000 square feet in the IBZ District. Lot 316 has about 5,700 square feet and also needs 30,000 square feet in the IBZ District. Lot 318 has 46,000 square feet and needs 60,000 square feet in the IR1 District. *All three of Carmen's lot were non-conforming lots when Long Island adopted its Zoning Ordinance in 1993.*

Combination of Lots: The Zoning Ordinance has two separate rules for non-conforming lots.

Shoreland Zoning section 4.12(E)(3) addresses lots in the Shoreland Zone like Lot 315. It states if two adjacent non-conforming lots are owned by the same person, and one of them is vacant, then they *shall be combined*.¹ Therefore, Lots 315 and 318 were combined in 1997 and Lot 316 combined with the other two lots in 2012.

Zoning Ordinance section 6.5(A) addresses non-conforming lots outside of the Shoreland Zone. It also states that Lots 315 and 318 had to be combined in 1997 because Lot 318 was vacant and vacant Lot 316 had to be combined with the other two lots in 2012 because Lot 316 was vacant. Subsection 6.5(B) offers no help because Lot 318 was vacant in 1997.

Therefore, Lots 315/316 and Lot 318 cannot be separated without a variance from the Zoning Board of Appeals.

Errors by Town of Long Island

2000 Code Enforcement Officer: The Town CEO never should have issued a building permit for a new residence on Lot 318 in 2000, because Lot 318 had been combined with Lot 315 with a residence in 1993 and only one residence was permitted on the combined lot. Carmen and her son William reasonably relied on the Code Enforcement Officer to properly interpret the Zoning Ordinance for them. As a result, Carmen now owns with two residences on one lot and cannot divide her lot into two smaller lots for each residence.

¹ There is an exception for lots owned by the same person on July 1, 1993, but Carmen only owned Lot 318 in 1993.

1980 – 2019 Assessments: Despite the Zoning Ordinance requirements that Carmen’s three lots be merged into one lot, the Town Real Estate Tax Assessor has continued to send Carmen three real estate tax bills and did so in 2019. Carmen had no idea that her lots had merged she asked me to create two separate lots and I reviewed the Town zoning.

Carmen’s Need for Variance

17 Garfield Street: Carmen wants to combine Lots 316 and 316 into a single lot with her residence. She needs a 23% reduction in lot size from 30,000 square feet to the existing 23,000 square feet.

19 Garfield Street: Carmen wants to make Lot 318 into a separate lot with her son’s residence. She needs a 23% reduction in lot size from 30,000 square feet to 46,000 square feet.

Variance: The only one of the four Zoning Ordinance section 13.5 variances that applies to Carmen’s situation is 13.5(4): Limited Variance from dimensional standards.

However, because part of Lot 315 is in the Shoreland Zone, she cannot meet standard 13.5(4)(f). Therefore, it appears that Carmen needs a normal *statutory variance* in accordance with 30-A M.R.S. §4353(4) which is attached as Exhibit 4.

Options: Carmen and I believe that this analysis is correct. Perhaps you know another way for Carmen to lawfully create two lots. If not, and you agree with this analysis, then please let me know and I will get a variance application filed soon.

Contact me with questions.

207-518-9825

cneagle@troubhheisler.com

MAP 1

Legend

- 911 Roads
- Tributary Streams
- 250' Shoreland Zone Boundary
- 75'-25' Shoreland Zone Boundary

- Zones
- IB
 - IR1
 - IR2
 - R-OS
 - RPZ
 - RRZD

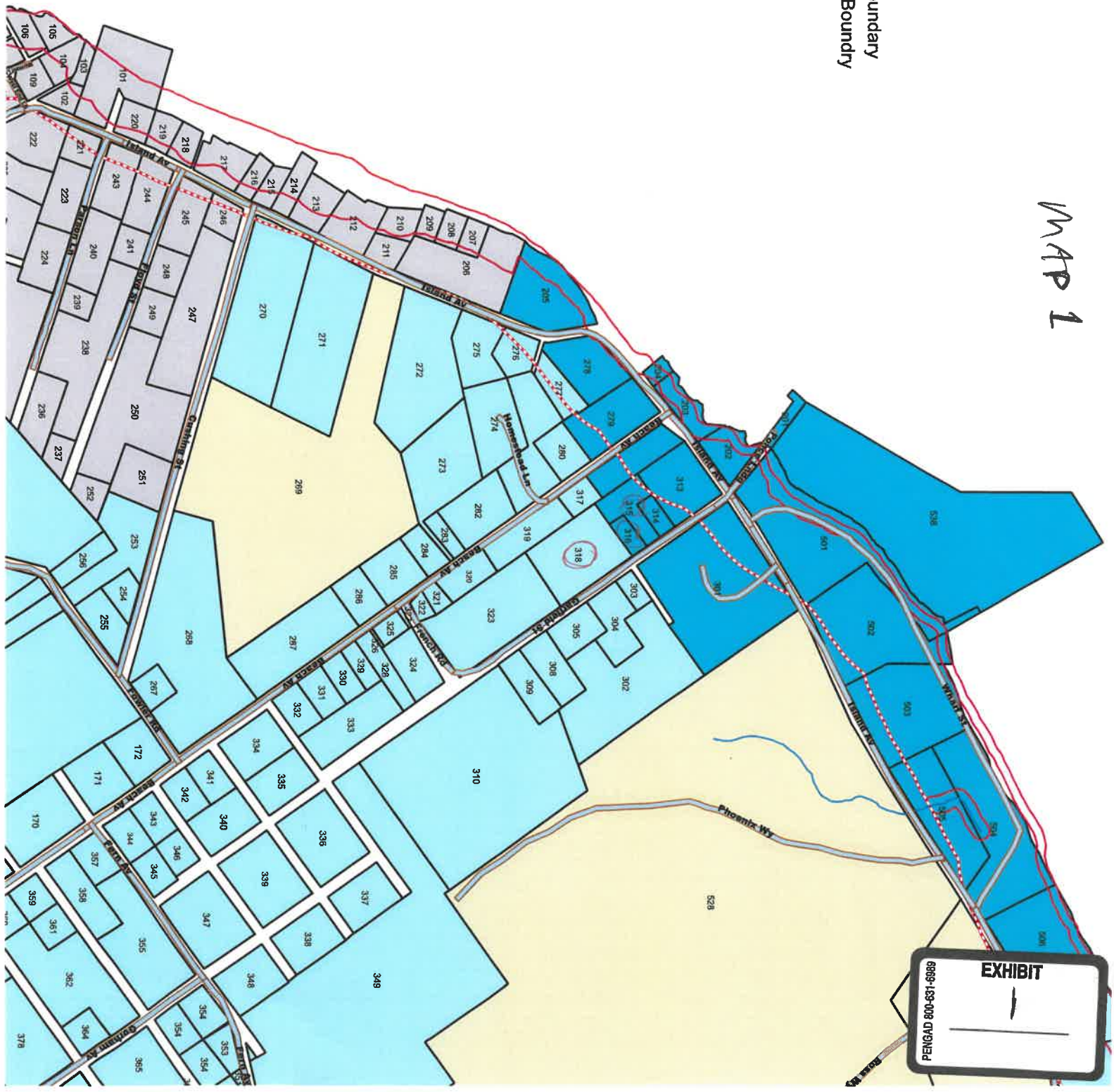


EXHIBIT
6886-153-008 GARDENHURST



Title 30-A: MUNICIPALITIES AND COUNTIES

Part 2: MUNICIPALITIES

Subpart 6-A: PLANNING AND LAND USE REGULATION

Chapter 187: PLANNING AND LAND USE REGULATION

Subchapter 3: LAND USE REGULATION

§4353. Zoning adjustment

Any municipality which adopts a zoning ordinance shall establish a board of appeals subject to this section. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

1. Jurisdiction; procedure. The board of appeals shall hear appeals from any action or failure to act of the official or board responsible for enforcing the zoning ordinance, unless only a direct appeal to Superior Court has been provided by municipal ordinance. The board of appeals is governed by section 2691, except that section 2691, subsection 2, does not apply to boards existing on September 23, 1971.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

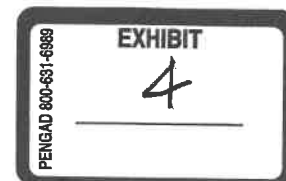
2. Powers. In deciding any appeal, the board may:

A. Interpret the provisions of an ordinance called into question; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance except that, if the municipality has authorized the planning board, agency or department to issue these permits, an appeal from the granting or denial of such a permit may be taken directly to Superior Court if required by local ordinance; and [PL 2011, c. 655, Pt. JJ, §24 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

C. Grant a variance in strict compliance with subsection 4. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

[PL 2011, c. 655, Pt. JJ, §24 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]



3. Parties. The board shall reasonably notify the petitioner, the planning board, agency or department and the municipal officers of any hearing. These persons must be made parties to the action. All interested persons must be given a reasonable opportunity to have their views expressed at any hearing.

[PL 2011, c. 655, Pt. JJ, §25 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

4. Variance. Except as provided in subsections 4-A, 4-B and 4-C and section 4353-A, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The land in question can not yield a reasonable return unless a variance is granted; [PL 1991, c. 47, §1 (AMD).]

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. The granting of a variance will not alter the essential character of the locality; and [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

D. The hardship is not the result of action taken by the applicant or a prior owner. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

[PL 2013, c. 186, §1 (AMD).]

4-A. Disability variance; vehicle storage. A disability variance may be granted pursuant to this subsection.

A. The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.

The board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this