

TOWN OF EDEN  
ZONING BOARD OF APPEALS  
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: February 18, 2021

BOARD MEMBERS PRESENT: Kristin Kent, Chair  
Joseph Winiecki  
Drew Riedel  
Curtis Neureuter  
Doug Scheu

ALTERNATE MEMBER: Candice Pineau

CODE ENFORCEMENT OFFICER: Dave Rice

APPLICANT: Edward & Valerie Sarcione  
ATTORNEY FOR APPLICANT: Paul Bender, Esq.

RESIDENTS PRESENT: Bill & Laura Demsey  
Ron & Karen Cork  
Mike Alessi  
Thomas Hooper  
Megan Colosimo

RE: **Appeal No. 2021-2**  
**Edward & Valerie Sarcione**  
**8175 Schreiner Road**

All participants attended by GoToMeeting or telephone call-in.

Ms. Kent called the hearing to order at 7:00 p.m. and requested comments on the January minutes.  
**Mr. Riedel made a motion to approve the minutes from the January 21, 2021 meeting; seconded by Ms. Kent. Motion approved unanimously.**

Ms. Kent then read the Legal Notice published in "The Sun":

**Sarcione:** Application for a variance at 8175 Schreiner Road, to allow subdivision of a parcel in violation of the minimum frontage rule in Code section 225-23.

Ms. Crowe confirmed that the Legal Notice to neighbors was completed by Mr. Bender. Ms. Kent invited Mr. Bender, attorney for the Sarciones, to present the background on the variance request.

Mr. Bender provided the history of the property split that took place in 1999, without prior subdivision approval. He explained that the property was originally over 12 acres. The Sarciones decided to create two parcels, selling one that was improved by a home, and retaining a vacant parcel that would be sold as a building lot. Mr. Sarcione thought the subdivision into two lots had been approved by the building inspector. He had a survey and deeds prepared, and sold the larger, improved lot to the Dempseys in 1999. He later learned that he would need formal subdivision approval. That approval was denied in 1999, because the Dempsey parcel had insufficient frontage (140' rather than 200' in the Rural Residential zone). He then asked the ZBA in 1999 for a variance for the Dempsey frontage shortfall; the variance request was denied in 2000 by the ZBA. Since that

time, the Town has taken no action against the Sarciones for the improper subdivision; the Town Code allows for fines and/or incarceration.

The Sarciones are again seeking the same frontage variance for the Dempsey parcel, which is needed for subdivision approval for the two lots. Mr. Bender suggested two issues for consideration in this variance request that he believes weren't addressed by the earlier ZBA:

- Would the Dempsey frontage variance change the character of the neighborhood? He believes it would not, because the Dempsey lot already is in a "horseshoe" shape around the Cork parcel (8167 Schreiner), which for many decades has had only 142' of frontage, nearly identical to the Dempsey frontage. Also, parcels immediately adjacent to the Dempsey parcel, on the south, are in the Hamlet Residential zone which allows frontage of 100' or 150'. And on March Road, just a few lots to the north, a number of lots don't have 200' of frontage, many have frontage of 100' or 150'.
- If the variance is granted, the Sarciones would be able to sell their parcel because it's otherwise fully compliant. The Dempsey lot would become compliant. It's not compliant now, because of the frontage shortfall. If the Dempseys wish to sell, or need a building permit, they may not be able to proceed without a variance.

Mr. Scheu displayed a map on the GoToMeeting screen, showing the location of the Dempsey and Sarcione lots and other nearby parcels. The map is attached to these Minutes.

**Mr. Bender was then asked questions by the Board related to the requirements for variances** *(his answers are in italics):*

**Will this create an undesirable change in the neighborhood?** *No, as I said. The property at 8167 Schreiner Road, with frontage of 142', is considered a compliant lot because it was created before the current Code was written. 8175 Schreiner Road, the lot needing the variance, has had 140' of frontage since 1999. The bordering properties to the south are zoned Hamlet Residential and only require 100' of frontage. (The Dempsey south line is the dividing line between the two zoning districts.) There will be no change to the neighborhood.*

Mr. Dempsey said that his portion of Schreiner Road is only ¼ mile long and already has 8 homes. Mr. Sarcione is trying to "squeeze in" another home. His property was "shorted suspiciously" by Mr. Sarcione, who carved out a perfect lot for himself.

Mr. Cork stated that Mr. Sarcione kept the needed frontage for his lot just so he could resell another lot. Neighbors are 100% against the variance.

**Is there an alternative method that could provide a solution?** (Ms. Kent noted that the original parcel did not have 400' of frontage to accommodate two parcels having 200' frontage each.)

Mr. Dempsey again questioned why his lot is short on frontage and the Sarcione's lot isn't. Why not give his lot the frontage required, and make the Sarciones ask for a variance on their lot?

Mr. Cork agreed with Mr. Dempsey.

**Will the property split create a substantial variance?** *No, 30% is not substantial. This parcel is surrounded by properties with similar frontage amounts, including the Cork parcel with virtually identical frontage and the lots to the south in Hamlet Residential.*

Mr. Neureuter stated 30% is substantial. If his pay is cut 30% that would be substantial, even if others receive the same pay cut. Mr. Scheu agreed that a 30% variance is substantial, but noted that

the directly adjacent Hamlet Residential properties mitigate the impact somewhat. Mr. Riedel indicated he feels 30% is substantial. Ms. Kent believes the frontage shortfall isn't substantial, since the Dempsey parcel fulfills the frontage rule by 70%. This is reasonable compliance, in her view. Mrs. Colosimo (8194 Schreiner) offered that when they bought their lot about 6 years ago to build their new home, they were short 10' of frontage. The building inspector suggested they change the measurements so frontage would be compliant, and they did that, paying for a second survey. She recalls hearing that a 10' frontage deficit would alter the feel of the neighborhood in a substantial way. She believes the Sarciones shouldn't "get a pass" when they created a violation, knowingly or not. She and Mr. Neureuter discussed that the granting of the Dempsey variance is the only function of the ZBA at this time.

**Will the variance create an adverse effect on the environment?** *There will be no known impact on the environment. The parcel is over 7 acres, has been in existence since 1999 with no known environmental issues, and the variance is about the frontage measurement only.*

**Is the need for a variance self-created?** (Ms. Kent noted that whether an issue is "self-created" is expressly stated to not preclude the granting of a variance, under NYS guidance.) *There is no denying that Mr. Sarcione subdivided the property without the necessary approval. We have to look at his intent, was he truly trying to hide a subdivision? Mr. Sarcione went to Mr. Henry, building inspector at the time, and inquired about the subdivision. Mr. Henry drew the line on the survey indicating where the property should be split. Mr. Sarcione felt that was sufficient approval to split the land. He only learned about the frontage issue three months later, after his sale to the Dempseys.*

Mr. Dempsey said no one knows whether Mr. Sarcione tried to do it right, but because it wasn't done right, he's at risk if his house burns down and he can't get a permit to rebuild. Mr. Sarcione caused this problem and he should have to fix it. Mr. Bender noted that the granting of the variance would solve that problem. Mrs. Dempsey noted that they offered to buy the vacant lot for \$5000 in 1999, and Mr. Sarcione turned them down.

Mr. Alessi remarked that former building inspector Scott Henry went "by the books" on everything. He believes that Mr. Sarcione wanted to retain the frontage for his lot and took advantage of the Dempseys. Why not give the Dempseys the frontage? The variance would set a precedent that would let everyone in Eden do what they want.

Mr. Cork repeated that Mr. Sarcione created the two lots in a way that would let him make more money; he shouldn't be allowed to create another lot; the problem is not the Dempsey's fault.

Mr. Hooper questioned whether anyone can draw a line and create new lots. Why aren't there rules?

Ms. Kent noted that Eden has subdivision rules - that's why we're here. She added that the Board has heard the frustrations expressed by both sides, but asked participants to understand that the Town can't just look at lot lines drawn in 1850, 1950 or 2010 and declare "no new parcels." The ZBA may agree that Mr. Sarcione made a serious mistake that disadvantages the Dempseys. But the ZBA must decide on the variance using the legal rules for a zoning board, which don't include authority to rule on alleged moral or character flaws.

Mr. Neureuter added that the ZBA is not a court. If the Dempseys believe they have been damaged, they can pursue legal remedies. We only have authority to deal with the one issue before us: whether the Dempsey parcel should receive a frontage variance.

The Dempseys said they don't want the variance to be granted, but acknowledged they haven't taken any steps to seek a remedy from the Sarciones.

Ms. Kent solicited any further public comments.

The Dempseys shared their view that the \$5000 offer they made for the Sarcione lot in 1999 was a fair market value price. Mr. Bender indicated the 1999 offer isn't relevant now. The Dempseys and Mr. Bender discussed whether the Dempseys had been willing to accept the variance in 1999, as indicated by their counsel's comments at the earlier ZBA hearing.

Ms. Kent noted again that the only question being heard is the frontage shortfall variance. This Board can't force the Sarciones to sell, and can't change lot lines.

Mr. Bender, Mr. Neureuter, Ms. Kent and Mr. Dempsey discussed the possible legal difficulties the Dempseys could encounter by reason of their nonconforming frontage.

Ms. Kent asked for Board member discussion of the variance request.

Mr. Scheu expressed sympathy for the Dempseys' situation, and said he also understands the Sarciones' frustration about the inability to sell the retained parcel. But he feels the neighbors' opposition to the variance sounds punitive in nature. It's interesting and sad that the Dempseys are opposed to a variance that would give them relief from the frontage deficit. Mr. Scheu and Ms. Kent discussed that the variance also would enable Mr. Sarcione to complete his subdivision application. Mr. Scheu said he understands that the Dempsey sale went ahead without subdivision approval, but there are lots immediately south with similar small frontage, with no apparent impact on the character of the neighborhood.

Mr. Winiecki noted that the Board has listened to, and understands, these difficult issues. Neighbors expressed their feelings passionately, which weighs on his decision. He asked whether the hearing might be tabled, to allow the parties to create a reasonable solution.

The Dempseys repeated that they don't want the variance, even though it would solve their problem. They intend to seek remedies against Mr. Sarcione. Mr. Bender doesn't believe it would be productive to have more time to consider the fair market value issue. He indicated the Sarciones would be willing to sell the vacant lot to the Dempseys if a third party offer were matched, but doesn't believe the Dempseys would consider that.

Mr. Neureuter noted that he is minimizing the neighbors' opposition, because that isn't part of what the Board must evaluate. He favors denying the variance because the "substantial" and "self-created" standards aren't met.

Mr. Riedel offered that the level of opposition from the neighbors is disheartening. The proposed variance would give relief to the Dempseys and would permit the Sarciones to sell a large, vacant, conforming lot. The variance isn't a building permit for a new home.

**Mr. Riedel made a motion to deny the requested frontage variance for 8175 Schreiner Road. Seconded by Mr. Scheu. Mr. Riedel, Mr. Scheu and Mr. Neureuter voted in favor of the denial; Ms. Kent and Mr. Winiecki voted against.** (Ms. Pineau indicated she would vote to grant the variance, but since she is the Alternate and the full Board was present, her vote wasn't counted.) **Motion to deny the variance was approved.**

Meeting was adjourned at 8:10 pm.

Respectfully submitted,

Jen Crowe, Secretary Eden Zoning Board of Appeals  
February 24, 2021



The screenshot displays the ERIE COUNTY, NEW YORK Interactive Mapping Viewer. The map shows a large blue-shaded parcel on Schreiner Road, with a red pin marker. The interface includes a search bar, navigation tools, and a sidebar with property details.

**Property Details:**

- DESCRIPTION**
  - 88-233.00-1-28.111
  - Municipality: Eden
  - Owner: DEWISSEY WILLIAM B
  - Dimensions: 140'00
  - Average: 3.468 acres
  - Property Class: 8 - 1 Family Res
- Hyperlinks**
  - Real Property Tax System 223.00-1-28.111
  - Google Maps: 8175 SCHREINER RD
- Details**
  - SWIS: 144000
  - APN: 1440002230000001029111
  - SBL: 223.00-1-28.111
  - ADJACENT: SCHREINER RD
  - Notes: SPLIT OFF 5.0 VACANT ACRE

**Map Interface:**

- Search:** 8175 Schreiner Rd - Google Ma...
- Tools:** Find Data, Draw Graphics, Measure, Link, Plot Coordinates, Linked Maps, Print, Export, Tables.
- Map Style:** Road Property Information
- Scale:** 0, 100, 200m
- Legend:** 8157, 8161, 8175, 8176, 8177, 8178, 8179, 8180, 8181, 8182, 8183, 8184, 8185, 8186, 8187, 8188, 8189, 8190, 8191, 8192, 8193, 8194, 8195, 8196, 8197, 8198, 8199, 8200, 8201, 8202, 8203, 8204, 8205, 8206, 8207, 8208, 8209, 8210, 8211, 8212, 8213, 8214, 8215, 8216, 8217, 8218, 8219, 8220, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8228, 8229, 8230, 8231, 8232, 8233, 8234, 8235, 8236, 8237, 8238, 8239, 8240, 8241, 8242, 8243, 8244, 8245, 8246, 8247, 8248, 8249, 8250, 8251, 8252, 8253, 8254, 8255, 8256, 8257, 8258, 8259, 8260, 8261, 8262, 8263, 8264, 8265, 8266, 8267, 8268, 8269, 8270, 8271, 8272, 8273, 8274, 8275, 8276, 8277, 8278, 8279, 8280, 8281, 8282, 8283, 8284, 8285, 8286, 8287, 8288, 8289, 8290, 8291, 8292, 8293, 8294, 8295, 8296, 8297, 8298, 8299, 8300, 8301, 8302, 8303, 8304, 8305, 8306, 8307, 8308, 8309, 8310, 8311, 8312, 8313, 8314, 8315, 8316, 8317, 8318, 8319, 8320, 8321, 8322, 8323, 8324, 8325, 8326, 8327, 8328, 8329, 8330, 8331, 8332, 8333, 8334, 8335, 8336, 8337, 8338, 8339, 8340, 8341, 8342, 8343, 8344, 8345, 8346, 8347, 8348, 8349, 8350, 8351, 8352, 8353, 8354, 8355, 8356, 8357, 8358, 8359, 8360, 8361, 8362, 8363, 8364, 8365, 8366, 8367, 8368, 8369, 8370, 8371, 8372, 8373, 8374, 8375, 8376, 8377, 8378, 8379, 8380, 8381, 8382, 8383, 8384, 8385, 8386, 8387, 8388, 8389, 8390, 8391, 8392, 8393, 8394, 8395, 8396, 8397, 8398, 8399, 8400, 8401, 8402, 8403, 8404, 8405, 8406, 8407, 8408, 8409, 8410, 8411, 8412, 8413, 8414, 8415, 8416, 8417, 8418, 8419, 8420, 8421, 8422, 8423, 8424, 8425, 8426, 8427, 8428, 8429, 8430, 8431, 8432, 8433, 8434, 8435, 8436, 8437, 8438, 8439, 8440, 8441, 8442, 8443, 8444, 8445, 8446, 8447, 8448, 8449, 8450, 8451, 8452, 8453, 8454, 8455, 8456, 8457, 8458, 8459, 8460, 8461, 8462, 8463, 8464, 8465, 8466, 8467, 8468, 8469, 8470, 8471, 8472, 8473, 8474, 8475, 8476, 8477, 8478, 8479, 8480, 8481, 8482, 8483, 8484, 8485, 8486, 8487, 8488, 8489, 8490, 8491, 8492, 8493, 8494, 8495, 8496, 8497, 8498, 8499, 8500, 8501, 8502, 8503, 8504, 8505, 8506, 8507, 8508, 8509, 8510, 8511, 8512, 8513, 8514, 8515, 8516, 8517, 8518, 8519, 8520, 8521, 8522, 8523, 8524, 8525, 8526, 8527, 8528, 8529, 8530, 8531, 8532, 8533, 8534, 8535, 8536, 8537, 8538, 8539, 8540, 8541, 8542, 8543, 8544, 8545, 8546, 8547, 8548, 8549, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8557, 8558, 8559, 8560, 8561, 8562, 8563, 8564, 8565, 8566, 8567, 8568, 8569, 8570, 8571, 8572, 8573, 8574, 8575, 8576, 8577, 8578, 8579, 8580, 8581, 8582, 8583, 8584, 8585, 8586, 8587, 8588, 8589, 8590, 8591, 8592, 8593, 8594, 8595, 8596, 8597, 8598, 8599, 8600, 8601, 8602, 8603, 8604, 8605, 8606, 8607, 8608, 8609, 8610, 8611, 8612, 8613, 8614, 8615, 8616, 8617, 8618, 8619, 8620, 8621, 8622, 8623, 8624, 8625, 8626, 8627, 8628, 8629, 8630, 8631, 8632, 8633, 8634, 8635, 8636, 8637, 8638, 8639, 8640, 8641, 8642, 8643, 8644, 8645, 8646, 8647, 8648, 8649, 8650, 8651, 8652, 8653, 8654, 8655, 8656, 8657, 8658, 8659, 8660, 8661, 8662, 8663, 8664, 8665, 8666, 8667, 8668, 8669, 8670, 8671, 8672, 8673, 8674, 8675, 8676, 8677, 8678, 8679, 8680, 8681, 8682, 8683, 8684, 8685, 8686, 8687, 8688, 8689, 8690, 8691, 8692, 8693, 8694, 8695, 8696, 8697, 8698, 8699, 8700, 8701, 8702, 8703, 8704, 8705, 8706, 8707, 8708, 8709, 8710, 8711, 8712, 8713, 8714, 8715, 8716, 8717, 8718, 8719, 8720, 8721, 8722, 8723, 8724, 8725, 8726, 8727, 8728, 8729, 8730, 8731, 8732, 8733, 8734, 8735, 8736, 8737, 8738, 8739, 8740, 8741, 8742, 8743, 8744, 8745, 8746, 8747, 8748, 8749, 8750, 8751, 8752, 8753, 8754, 8755, 8756, 8757, 8758, 8759, 8760, 876