



**Town of Southampton**

**Board of Appeals**

*This is Not a Building Permit*

**DECISION NO. D015178**

**DECISION DATE: December 17, 2015**

**VARIANCE IS HEREBY GRANTED**

**OWNER:** Joseph A Giannini  
309 Silver St  
North Babylon NY 11704

**LOCATION:** 86 Old Sag Harbor Rd, North Sea

**DETERMINATION:**

This Board grants applicant relief from Town Code Section 330-82 (lot width) to allow a 0 foot road frontage for two landlocked parcels over a 50 foot wide easement area where the minimum road frontage of a lot at the street line shall be at least 40 feet in all districts, as shown on the survey of F. Michael Hemmer, LS, dated September 21, 2015.

Pursuant to application, and survey and conditions as approved by the Board of Appeals.

**NOTE:** The holder of this variance is requested to familiarize himself with the ordinance under which said variance is granted. Any violation of the provisions of said ordinance shall render the offender liable for the penalties provided therein, and in addition thereto, may result in the immediate revocation of the building permit.

*This notice must be kept on the premises until full completion of the work authorized.*

PER

Herbert E. Phillips  
Chairman

**ZONING BOARD OF APPEALS  
TOWN OF SOUTHAMPTON**

-----X  
**In the Matter of the Application of  
Insource East Properties, Inc.  
86 and 138 Old Sag Harbor Road  
North Sea, New York  
SCTM #900-63-1-32 and 6**  
-----X

**DECISION**

**FINDINGS AND DETERMINATION**

Based upon the application and all the documents contained in the Board's file, including testimony and evidence received at the public hearing on this matter, the Zoning Board of Appeals finds and determines as follows: applicant seeks relief from Town Code §330-82 (lot width) to allow a 0 foot road frontage for two landlocked parcels over a 50 foot wide easement area where the minimum road frontage of a lot at the street line shall be at least 40 feet in all districts.

The subject premises are located at 86 and 138 Old Sag Harbor Road, North Sea, Town of Southampton, County of Suffolk, and State of New York. The properties are identified on the Suffolk County Tax Map as #900-63-1-32 and #900-63-1-6 and are approximately 12,495 square feet and 54,042 square feet in size respectively. The parcels are located in the CR-200 Zoning District, and are nonconforming. Both parcels are vacant and Joseph Gianni and Maureen Gianni took title to the premises by deeds dated February 10, 2009. This Board finds the subject application to be a Type II action under the State Environmental Quality Review Act ("SEQRA") and the relevant provisions of the Southampton Town Code. The following testimony was submitted at the public hearings on this matter:

Rob Marcincuk, Esq. of O'Shea, Marcincuk & Bruyn, LLP, appeared on behalf of the applicant stating that applicant seeks relief from this Board from the minimum road frontage requirement to give access to two landlocked parcels over a 50 foot wide easement area so that a single family dwelling may be constructed on the lots, which are to be merged into one building parcel. Mr. Marcincuk stated that a 50 foot wide easement from 1949 serves the lots which grants them access to Old Sag Harbor Road but does not provide "road frontage" as is required by the Town Code.<sup>1</sup> Mr. Marcincuk stated that there is no alternative to the request for relief and maintained that in fact, while both lots can be built upon separately, the applicant proposes to merge the two lots, creating one 66,537 square foot lot, and that the construction of a house will be screened by the existing vegetation on the premises. Mr. Marcincuk also submitted a Memorandum of Law asserting that the application passes the standards set forth in New York State Town Law and the Town Code and noting that there are at least five other parcels in the

<sup>1</sup> Applicant submitted a letter dated October 28, 2015, from Clarence R. Banks, President of Westcor Land Title Insurance, stating that the policy will "affirmatively insure ingress and egress over 50 ft. right of way adjoining the subject premises to the west to Old Sag Harbor Road."

immediate vicinity that have received relief from this Board for reduced road frontage. Mr. Marcincuk argued that denying the relief would be akin to a "taking" as the property would not be able to be developed.

Joseph Lombardo, Esq., and Ann Nowak, Esq., adjacent property owner, appeared in opposition to the application, asserting that relief should not be granted. Ms. Nowak added that she would consider withdrawing her objection to the variance if the applicant agreed to limit the size of the dwelling and restrict the building envelope to the area furthest away from her dwelling. Mr. Lombardo submitted a Memorandum of Law in Opposition to the application, asserting, among other things, that: (i) the lots have merged and are not single and separate; (ii) even as merged, the newly created parcel is not entitled to relief pursuant to Town Code §330-115D; and (iii) the application does not pass the standards set forth in Town Law and the Town Code for granting relief.

In order to grant the area variance relief requested, the Zoning Board of Appeals shall take into consideration the benefit to the applicants if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Further, the applicants must demonstrate, pursuant to §330-166(C) of the Town Code, that the proposed variance meets the standards set forth in that section, as well as the standards set forth in §267-b of New York State Town Law.

This Board finds that the benefit to the applicant outweighs any perceived detriment to the neighborhood or the community. The detriment to the neighborhood, as articulated by Ms. Nowak and Mr. Lombardo, is in the construction of a dwelling on the premises since it will obstruct their views of the vacant, wooded, premises. However, applicant is not before this Board for relief for a building envelope for the dwelling. Rather, applicant requires relief as the premises does not have any road frontage, and there was evidence presented that in fact, there are several properties in the neighborhood that have received relief from this Board for reduced road frontage, and a review of the tax map confirms several flag lots in the neighborhood. As such, it is likely that the granting of relief will have no discernible impact on the neighborhood. Likewise, this Board notes that it was presented to this Board that the two lots will merge, resulting in a larger (though still nonconforming) lot in this CR-200 zoning district—one that is larger in size than that of Ms. Nowak's. Therefore, Board finds that there is no detriment to the community here in granting 0 feet road frontage to the premises and that there is a great benefit to the applicant since securing the variance is necessary in order to build on the premises.

This Board also finds that the benefit sought by applicant cannot be achieved by some method, feasible to pursue, other than area variances as street frontage is required by the Town Code. Applicant's only alternative – to acquire title to property for access to Old Sag Harbor Road is not a practical or reasonable alternative where an easement to achieve such is already in place. Similarly, while the variance sought may appear substantial, under these circumstances with an easement in place and in light of the history of the parcel, this Board finds the relief not to be substantial. The granting of the variance will not have an adverse effect or impact on the physical or environmental conditions within the neighborhood since the relief requested, a Type II action, requires

no environmental review pursuant to SEQRA. In this instance, the alleged difficulty is not self-created since the premises appears to never have had road frontage. Assuming *arguendo*, however, that the difficulty was self-created, this Board is ever cognizant of the fact that a self-created hardship, in and of itself, is not a legal basis to deny the requested relief.

Therefore, this Board grants applicant relief from Town Code §Town Code §330-82 (lot width) to allow a 0 foot road frontage for two landlocked parcels over a 50 foot wide easement area where the minimum road frontage of a lot at the street line shall be at least 40 feet in all districts, as shown on the survey of F. Michael Hemmer, LS, dated September 21, 2015. Grant of the foregoing relief is subject to such other conditions and permits as applicant has already acquired or may otherwise have to acquire for final approval of the subject premises, including approval from the Road Review Committee, if necessary.

**Dated: December 17, 2015**



**Brian DeSesa**