

The McKownville Improvement Association

January 5, 1983

Town of Guilderland Zoning Board of Appeals
Town Hall
Guilderland, NY

presented orally in person

Ladies and Gentlemen:

Subject: Variance Request No. 2205, by
Charles E. Bryant, Inc., for property
situated at 50 Fuller Road.

50 Fuller Road is a lot of approximately 17,200 square feet, which is bisected by the zoning boundary line between the R-10 zoning of zoning district 49 along Providence Street and the B-2 zoning of district 56, Executive Park. Relying on Section VII-L of the Town Zoning Law, the applicant feels that he is entitled to consider that 13,760 square feet of the property is zoned B-2. However the minimum lot size required for a B-2 or B-1 use is 20,000 square feet. The applicant therefore appears to need a variance of 6,240 square feet, or 31%, to permit the property to be used for a commercial purpose. Note however that in fact only 8600 square feet of the property is zoned B-2, less than half of the minimum lot size needed.

The Officers and Board of the McKownville Improvement Association met with the Bryants on Monday evening, January 3, at which time Mr. Bryant explained his proposal to us. Following Mr. Bryant's presentation, the Board took the following actions:

it voted unanimously to express the Board's appreciation to the Bryants for meeting with us;

it voted unanimously to oppose Mr. Bryant's application for a variance;

it voted unanimously to call again upon the Town Board to change the zoning boundary in that area to prevent further applications of this kind; and

it authorized the undersigned to present to you, the Zoning Board, a statement of reasons for our opposition to the variance request.

That statement is the following:

The McKownville Improvement Association opposes granting of the variance requested by Charles E. Bryant, Inc., the applicant, essentially because the applicant fails to meet conditions (1), (2), (3) and (5) of Section IX-B of the Town Zoning Law regarding the granting of a variance. More particularly:

1. The granting of a variance is not necessary for the reasonable use of the land and buildings.

The property was developed as a residence, has always been used only or primarily as a residence, and is completely viable as a residence. The undersigned personally toured the property during an open house in September, 1982, and found that both the exterior and interior of the buildings on the property are in excellent condition, and are very attractive and suitable for continued residential use.

2. Granting this variance for 50 Fuller Road would be injurious to the vicinity.

50 Fuller Road is surrounded on four sides by residences. To the south is 46 Fuller Road, a residence, and a vacant lot at 48 Fuller Road which is leased to the U. S. Post Office for approximately 87 years. To the west are residences all along Providence Street. To the north are residences along Fuller Road right to the Albany City Line. To the east is an R-10 zone of residences on Fuller Road and Elmwood Street. To grant this variance would be to introduce a commercial use in an area where no other commercial use exists. A commercial use at 50 Fuller Road would injure the residential character of the neighborhood and property values of nearby residences, two of which are presently for sale.

Mr. Bryant's proposed plans essentially concede that the area is a residential area, and his plans show sensitivity to the residential character of the area. We appreciate his sensitivity. However, the parking he is required to have would cover nearly a third of the lot with blacktop. Moreover, the variance, once granted, carries no guarantee that future owners of 50 Fuller Road will share Mr. Bryant's present concern for retaining a residential look to the property.

3. There are no special circumstances or conditions applying to 50 Fuller Road which deprive the applicant of the reasonable use of the property.

The zoning on 50 Fuller Road is similar to the zoning of every property on the south side of Providence Street between Fuller Road and Tracy Street. The zoning line slices through each of these properties. Every lot is zoned partially B-2 and

partially R-10. Each property has always been used as a residence, and continued residential use of these properties is reasonable, and would be a permitted use even if one of the properties were vacant. 50 Fuller Road is no different. The applicant is entitled to, and may reasonably use, that property for residential use, just as it has always been used.

4. Granting a variance for 50 Fuller Road for commercial use is not in harmony with the general purpose and intent of the Zoning Law.

It is reasonable to assume that there was never any legislative intent of the Town Board to zone any part of 50 Fuller Road or the lots on Providence Street as B-2.

The zoning line runs parallel to and 125 feet south of Providence Street. The depth of the lots on the western end of Providence Street is 125 feet, but on the eastern end of Providence Street the depth of lots is 175 feet. The southern boundary of 50 Fuller Road is an extension of the southern boundaries of the lots on the eastern end of Providence Street. It is reasonable to assume that the Town Board did not realize where the southern boundaries of the lots on the eastern end of Providence Street were when the zoning boundary was defined.

It is unreasonable to believe that it was the intent of the Town Board to slice residential lots in two with its zoning boundary, or that it was ever the intent of the Town Board that 50 Fuller Road or any lot on Providence Street be considered as appropriate for B-2 use.

On more than one occasion residents of the area have brought to the attention of the Town this unreasonable zoning line. This Board may recall that the question of this line came up in 1980 in connection with the new Executive Park office building. At that time we were assured that the location of the zoning line made no difference, that the extra 50 feet posed no threat of further commercial development. No action was taken by the Town because none was felt to be needed. If this variance is granted it will be clear that we were misled.

There have been some comments that, because of increasing traffic, Fuller Road is not as attractive for residential use as it once was. Such a perception is not relevant to this application. The fact is that almost all of Fuller Road, including half of 50 Fuller Road, is in a residential zone, and is being used as residences. There are no nearby commercial non-conforming uses. There is no strip commercial development of the kind which blights Western Avenue and which was deplored by the authors of the Town's Master Plan. If the Town at some

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point determines that property on Fuller Road might better be used for other than residential uses, it is for the Town Board, not the Zoning Board, to make that determination, by changing the zoning.

This variance, if granted, would unilaterally transform a property which is and always has been residential, and which was clearly intended to be residentially zoned, into a commercial property. The Town Board, not the Zoning Board, should make such decisions.

5. The sole purpose of this variance application is for the financial gain of the Applicant.

This property came up for sale this summer at a price which was in line with comparable residential property in the area. The applicant purchased the property for the explicit purpose of commercial use, despite knowing that such commercial use was not permitted by the Zoning Law, and knowing that the property is a residential property in a residential area. If he obtains the variance he will presumably have obtained a business location which will be less expensive and more profitable for him than if he were to rent comparable space in Executive Park or in any other commercially zoned office location in the Town. If he does not obtain the variance, the property remains viable as a residence and he can rent or sell, as he wishes. Any hardship which will result to the Applicant by denial of this variance is self-imposed, as the result of a calculated business decision involving an element of risk. It is clear that there is no other purpose for this variance request than for financial gain.

6. Finally, to grant this variance would set a precedent for subsequent variance requests for comparably zoned properties elsewhere in the Town which would be contrary to the spirit of the Zoning Law.

The applicant appears to be seeking a variance of over 30%. In any case, he seeks a variance to permit a 20,000 square foot use on a lot with only 8600 square feet of suitable zoning. The variance sought is a very sizable one, which, if granted, will set a precedent. Such a precedent will imply that minimum lot sizes required for commercial developments in the Town will be in fact some 30% less than the limits defined in the Zoning Law. Such a precedent would clearly violate the intent and spirit of the Zoning Law, and, in our view, would substitute the interpretation of the Zoning Board for the legislative intent of the Town Board when it enacted the lot size provisions of the Zoning Law.

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For all these reasons, the Officers and Board of the McKownville Improvement Association respectfully urge this Zoning Board to deny the variance requested by Charles E. Bryant, Inc. for 50 Fuller Road.

Respectfully submitted,

Lindsay N. Childs
President