

Received

APR 30 1997

April 14, 1997

Satellite Policy Branch  
International Bureau

Secretary,  
Federal Communications Commission  
1919M Street Northwest  
Washington, DC 20554

ATTN: Satellite Policy Branch - International Bureau

Dear Secretary:

Please add the following to File Number 154SATDRZ96. I was recently made aware that this petition lacked all of the available information. Therefore, please accept this addendum.

As was stated in the original file, Mr. James Moffat, on July 3rd, 1996, purchased an installed on his residence a seven foot six inch diameter satellite dish. The dish was positioned on the roof of his home. The installer told Mr. Moffat that due to the amount of trees surrounding his house and neighboring homes, the roof or front yard is the only location to adequately receive satellite broadcast signals. Town of Orchard Park Building Code allows for placement of a satellite dish on side or rear yard, mounted no higher than twelve feet in height (copy of Town of Orchard Park Code enclosed).

Mr. Moffat was notified of this violation and on August 20th, 1996, a hearing took place before the Zoning Board of Appeals (copy of minutes of meeting enclosed).

As stated in the minutes of this meeting, a petition was circulated through our neighborhood explaining Mr. Moffat's unique situation. Eighty-two signatures were collected and presented to the Town Board (four of the five pages of signed petitions are enclosed). The Board was presented with twenty-four signatures against Mr. Moffat. If you look closely at the petitions for Mr. Moffat, you will notice two signatures of neighbors who originally opposed this variance.

I, Jim Culligan, have also appeared before this Board asking for a variance to install a satellite dish on my property and was denied twice. I mentioned this to note the similarities in the Board's reasoning for refusing both Mr. Moffat's and my own variance requests (a copy of the minutes of the two Board Meetings, dated 10/15/91 and 1/21/92, are enclosed).

In both Mr. Moffat's and my own situations, <sup>↓</sup> the Boards reasoning for denying the variances is based on the availability of cable TV in our area. I have strong objections with the Town of Orchard Park telling me how to purchase or receive broadcast signals. (1)

Please also note that within the minutes of the meetings as well as within the town ordinance (copy enclosed), there is no mention of "having a reasonable or clearly defined health, safety or aesthetic objective". (2)

The Town of Orchard Park Zoning Board of Appeals has in the past granted variances for the exact relief that Mr. Moffat is seeking. I have enclosed a copy of the minutes of the Board meeting of 10/15/91, in which Mr. Fred Gosielewski is granted a variance for installing a satellite dish on the roof of his house. His house is located in a subdivision of Orchard Park very similar to Mr. Moffat's with the only exception being that cable TV was not available at the time this variance was granted. (3)

I would also like to make you aware of what has transpired since the original petition was filed on 9/6/96. The Town of Orchard Park has sent numerous letters to Mr. Moffat reminding him of the denial of his variance. It is also my understanding that the town has been made aware of this petition. The most recent correspondence from the Town was delivered by a town police officer notifying Mr. Moffat that he is to appear in the Town of Orchard Park Court on 4/22/97 to answer why he has not removed this satellite dish from his roof. A warrant of his arrest will be issued if he fails to appear. Mr. Moffat has had to retain a lawyer for this appearance.

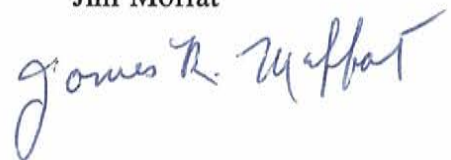
As in the original petition, we are asking both a declaratory ruling as well as preventing the Town of Orchard Park from forcing Mr. Moffat to remove the satellite dish.

Thank you for allowing me the opportunity to file this additional information.

Sincerely,

  
Jim Culligan

Jim Moffat



Enc.

**B. Roof-mounted antennas. [Amended 8-6-86]**

- (1) Roof-mounted antennas, including dish antennas or other devices for receiving, sending or relaying electronic signals, ~~except as hereinafter provided, shall not project more than six (6) feet above the highest point of the building nor exceed ten (10) square feet of wind-resistance area.~~
- (2) Roof-mounted antennas, including dish antennas or other devices for receiving, sending or relaying electronic signals in connection with point-to-point bypass communication facilities, which facility is located in an I-1 Industrial Zone, shall not exceed a height of ten (10) feet above the highest point of the building nor exceed four (4) square feet of wind-resistance area.

**C. [Added 8-6-86]** The height limitations of Article IV and Article V shall not apply to towers for point-to-point bypass communication facilities located within an I-1 Industrial Zone, which meet the following criteria:

- (1) Height of any such tower, together with any antennas attached thereto, shall not exceed eighty (80) feet, and the wind-resistance area of any antenna shall not exceed thirty (30) square feet.
- (2) The tower shall be no closer to any lot line than its height (tower and antennas).
- (3) The tower shall be located only in the rear yard and limited to not more than one (1) tower per site.
- (4) A site plan shall be made and shall include the submission of a certification by a registered professional engineer that the tower was designed and installed to withstand all load requirements for structures as set forth in the New York State Building Construction Code, the National Electrical Code and Electronics Industries Association Standard R5-22C specification.



The Secretary stated no communications have been received.

Mr. Zwolinski made a motion, seconded by Mr. Holmwood to GRANT this variance for the following reasons:

1. There will be no change in the character of the neighborhood. The garage to be built is a replacement for a demolished structure at approximately the same location.
2. The granting of this variance will have no adverse effect on the adjacent property values or privacy, nor will the health, safety and fire protection be diminished. The area immediately to the east is a ravine, with the land beyond that heavily wooded.
3. The proposed location of the new garage will allow a future expansion of the main dwelling in a reasonable, practical way.
4. Nearby neighbors have no objection to the granting of the variance.

THE VOTE ON THE RESOLUTION TO GRANT THIS VARIANCE BEING:

COON	AYE
MC GUIRE	AYE
ZWOLINSKI	AYE
HOLMWOOD	AYE
JAROCHA	AYE

THE VOTE BEING UNANIMOUS, THE VARIANCE IS HEREBY GRANTED.

4. ZBA File #30-96 James R. Moffat, 84 Old Orchard Lane, (Pt. of FL 36 T9 R7, SBL# 184.09-6-11), Zoned R-2. Request variance to exceed allowed dish size by 25.75 sq. ft., 10 sq. ft. allowed, Section 144-2(B), Schedules of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: James Moffat, owner of the property

Mr. Moffat stated he had Satellite Plus install a dish on his home. He was not aware that a building permit was required for this type of installation and was not advised by the installer that a building permit was required.

The Chairman explained to the petitioner the size of an antenna that is allowed under the Town ordinance.

Mr. Jarocha asked the petitioner the reason for installing the dish. He advised the Board that he wants additional television channels since he spends a lot of time indoors. Mr. Jarocha also asked the petitioner the reason a roof mounted dish was installed. Mr. Moffatt stated there are a lot of trees in the area of his home which required the placement of the dish on the roof to allow reception for the dish. It was determined that there was no documentation from the dish installer that this is the only place on the site that the dish could be installed.

The Chairman advised the petitioner and audience that a letter was sent to satellite dish antenna installers in the area advising them of the Town's ordinance regarding antennas.

Mr. Zwolinski determined from the petitioner the type of programming he views is for entertainment not for any business use. It was also determined that the area of the petitioner's residence is serviced by Adelphia Cable.

Mr. Mc Guire asked the petitioner if he considered a smaller dish than what the petitioner has. Mr. Moffatt stated he did not question the installer as to the type and size of the dish he would need.

The Chairman advised the petitioner that there is a petition dated August 15, 1996 signed by approximately 24 neighbors who are in opposition to the requested variance.

The Chairman then asked if there was anyone in the audience who would wish to speak on behalf of granting this variance.

(Twice)

PROPONENT:

James Culligan  
85 Old Orchard Lane  
Orchard Park, New York 14127

Mr. Culligan presented, to the Board, a petition signed by approximately 82 neighbors in favor of the proposed variance. Mr. Culligan stated that Mr. Moffatt is a good neighbor and stated he does have physical problems that do restrict his ability for entertainment outside of his home.

PROPONENT:

Karen Popson  
83 Old Orchard Lane  
Orchard Park, New York 14127

Mrs. Popson stated Mr. Moffatt is a good neighbor, maintains his property and feels that the dish is barely visible because of all the woods behind the petitioner's home. She also feels Mr. Moffatt should be allowed some type of entertainment in his home because of his physical difficulties.

PROPONENT:

Justin Gabreski  
81 Old Orchard Lane  
Orchard Park, New York 14127

Mr. Gabreski stated he is a neighbor of the petitioner and feels the dish is unobtrusive. He stated that the dish is black mesh which blends in with the trees behind it on the petitioner's property. He also wants to see the petitioner to be able to keep the dish for his use. He does not feel the dish will devalue any of the homes in the neighborhood.

PROPONENT:

Patricia Culligan  
85 Old Orchard Lane  
Orchard Park, New York 14127

Mrs. Culligan is in favor of the requested variance.

The Chairman then asked if there was anyone in the audience who would wish to speak against the granting of this variance.

(Twice)

OPPOSITION:

Therese Bonnas  
72 Old Orchard Lane  
Orchard Park, New York 14127

Ms. Bonnas is in opposition to the requested variance. She does feel the dish is very noticeable. She feels that it deteriorates the beauty of the neighborhood.

OPPOSITION:

Richard Ross  
101 Old Orchard Lane  
Orchard Park, New York 14127

Mr. Ross stated a 8 ft. dish on the roof disturbs him. He does not feel that size of a dish is necessary, a smaller dish would certainly suffice. He has concerns that other people in the neighborhood will want dishes that can't



be concealed. He does have compassion for the petitioner and if this was the only variance for this type of antenna in the neighborhood, he might be agreeable to it.

The Chairman advised the audience that any decision of the Zoning Board is not precedent setting and each case has to stand on its own merits.

OPPOSITION:

Neil Infante  
87 Old Orchard Lane  
Orchard Park, New York 14127

Mr. Infante asked the Chairman what the petition said with the signatures in favor of the dish. The Chairman read the petition for the audience.

Mr. Infante stated he does not want to create hard feelings in the neighborhood. He stated that the petitioner has put up a dish with no permit and allowed a company to put a dish on his roof without knowledge of what was required by the Town. He feels that the ordinance is to regulate satellite dishes for aesthetic and safety purposes. Mr. Infante stated he is not against the petitioner having a dish that is either smaller or ground mounted. He stated he has nothing against this neighbor, but feels this is a self created problem. He is also in agreement with other neighbors that this could cause a lot of neighbors to install dishes on the roof of their homes. He requests that the Board will help maintain the beauty of the neighborhood and deny this request.

The Chairman then asked if the Secretary had any communications either for or against granting the variance.

The Secretary stated no communications have been received.

The Chairman stated he feels that the applicant was either misled or a lot of omission of information on the part of the satellite dish installer. He does have safety concerns with the dish being mounted on the roof.

The Chairman asked the Deputy Town Attorney if a variance is granted could the Board put a restriction on the variance that the dish be inspected by a certified engineer, hired by the petitioner, to insure its safety. The Deputy Town Attorney stated this would not be an unreasonable request of the Zoning Board.

Mr. Mc Guire asked if the Building Inspector's Office would be able to inspect the dish to insure its safety. The Building Inspector stated this is not something that his department does. It is the responsibility of the petitioner to insure his department that it is safe and installed properly.

Mr. Jarocha believes the petitioner was not aware of what was required of him. He does have concerns with the size of the dish and is this the only location this dish could be placed on the property. He suggested that the petitioner come back with the installer to answer these questions. Mr. Mc Guire stated the Board does not have any technical evaluation available to either contradict or support the installer's information.

Mr. Zwolinski stated although there is great sympathy for the petitioner, the Board needs to focus on why variances are granted and there has to be some difficulty with the property not a personal condition. He does feel the petitioner has options available to him. There is also strong neighborhood opposition to the variance.

Mr. Zwolinski made a motion, seconded by Mr. Mc Guire, to DENY this variance for the following reasons:

1. The applicant has a self created hardship in that a building permit was not sought for the construction of a non-conforming roof mounted antenna.
2. There are several options available to the applicant for achieving a wide range of programming for his personal recreation. Old Orchard Lane is serviced by Aldelphia Cable. There are smaller dish reception systems available and have had no indication that a ground mounted antenna could not be located on that property.
3. This is strictly a personal hardship. The Board sympathizes with the disabilities of the petitioner but this cannot be the basis on which to grant a variance which must be related to the uniqueness of the land.
4. The variance sought is substantial in relationship to the requirements of the ordinance.
5. The opposition of the neighborhood is persuasive although there are a number of neighbors who support the case.
6. There will be a change in the character of the neighborhood.



The Chairman stated the applicant probably has some legal recourse against the satellite dish installer. The Zoning Board secretary does have a list of satellite dish installer's that were notified of the Town of Orchard Park requirements with regard to antennas.

THE VOTE ON THE RESOLUTION TO DENY THIS VARIANCE BEING:

COON	AYE
MC GUIRE	AYE
ZWOLINSKI	AYE
HOLMWOOD	AYE
JAROCHA	AYE

THE VOTE BEING UNANIMOUS, THE VARIANCE IS HEREBY DENIED.

5. ZBA File #31-96 636 Center Road, Inc., P.O. Box 434, West Seneca, N.Y. 14224, re: Vacant land at Benning Rd., (Pt. of FL68 T9 R7, SBL# 185.04-2-14), Zoned A-1. Request variance of 5.62 feet for access to lot. 30 ft. required. Art. IV, Section 144-22(B).

APPEARANCE: Marlene Whittington, President of 636 Center Road, Inc.

Ms. Whittington stated when the property was purchased the requirement for a driveway was 15 ft. and 30 ft. is required at the present time. She is requesting a variance for access to the rear property which requires the proposed 5.62 foot variance.

The petitioner is proposing to divide the parcel but does not have the exact divisions of the property at this time. She was under the impression that the parcel could be split four (4) times. It was determined that the parcel has an access onto Ellicott Road. She also stated there is an additional access to the water tower on the property.

Mr. Zwolinski stated he has concerns granting a variance for a parcel when the Board does not know how the parcel will be divided. He stated that there are three (3) entrances to the parcel, anyone of which would meet the required 30 ft. wide drive entry way to the parcel.

Ms. Whittington advised the Board that she has had developers approach her to develop this parcel as a subdivision, but this is not her intent, she feels that would spoil this parcel of land.

We the undersigned would like to express our support for our neighbor,  
James Moffat at 84 Old Orchard Lane  
 to be able to maintain his rooftop satellite dish in its current state and location.

Jim is an excellent neighbor, and as evidenced in the included photo, the satellite dish is unobtrusive, and blends in well with the trees. Jim has a spinal cord injury, and requires the use of a wheelchair for mobility. Jim has regularly attended sporting events since he has lived in our neighborhood. Over the past winter, he developed respiratory complications after attending a sporting event which required extensive hospitalization and continued respiratory support. At this point in his life, attending future outdoor sporting events poses a medical risk for Jim. The combination of Jim's limited mobility, associated medical conditions, and the harsh winters in the Buffalo area is a unique combination. Jim's satellite dish provides him with access to activities and events that the majority of us take our ability to attend for granted.

We feel the antenna poses no inconvenience, danger, or aesthetic problems to our neighborhood. We are disturbed at the thought that the town of Orchard Park and/or our neighbors could not extend compassion for an individual with a disability who has found a means for enjoying his life under the set of physical limitations that have been imposed upon him. We would be opposed to the removal of Jim's satellite dish, and feel such a decision by the town board would reflect poorly on the town.

Name:	Signature:	Address:
GARY R. Jenner	GARY R. Jenner	55 Old Orchard Lane
Catherine Jenner	Catherine Jenner	55 Old Orchard Lane
Margaret Fischman	Margaret Fischman	6 Old Post Rd.
Cheryl Braunschweig	Cheryl Braunschweig	54 Old Orchard Lane
Mark Fischman	Mark Fischman	6 Old Post Rd. OP
Thomas Braunschweig	Thomas Braunschweig	54 Old Orchard Lane
Bonnie Szwed	Bonnie Szwed	53 Old Orchard Lane
Carmela Monaco	Carmela Monaco	133 Old Orchard Lane
Richard Szwed	Richard Szwed	53 Old Orchard Lane
Yvonne Puzga	Yvonne Puzga	119 Old Orchard Lane Orchard Park
Sam Puzga	Sam Puzga	119 Old Orchard Lane Orchard Park
Marlene Bonetto	Marlene Bonetto	111 Old Orchard Ln Orchard PK
David Howard	David Howard	109 Old Orchard Ln Orchard Park
Todd Monico	Todd Monico	122 Old Orchard Ln. OP. 14127
ROBERT Bucholtz	Robert Bucholtz	58 Old Orchard OP. 14127
Beverly Bucholtz	Beverly Bucholtz	58 Orchard PK NY

Went by house and checked my mind.

We the undersigned would like to express our support for our neighbor,  
James Moffat at 84 Old Orchard Lane  
 to be able to maintain his rooftop satellite dish in its current state and location.

Jim is an excellent neighbor, and as evidenced in the included photo, the satellite dish is unobtrusive, and blends in well with the trees. Jim has a spinal cord injury, and requires the use of a wheelchair for mobility. Jim has regularly attended sporting events since he has lived in our neighborhood. Over the past winter, he developed respiratory complications after attending a sporting event which required extensive hospitalization and continued respiratory support. At this point in his life, attending future outdoor sporting events poses a medical risk for Jim. The combination of Jim's limited mobility, associated medical conditions, and the harsh winters in the Buffalo area is a unique combination. Jim's satellite dish provides him with access to activities and events that the majority of us take our ability to attend for granted.

We feel the antenna poses no inconvenience, danger, or aesthetic problems to our neighborhood. We are disturbed at the thought that the town of Orchard Park and/or our neighbors could not extend compassion for an individual with a disability who has found a means for enjoying his life under the set of physical limitations that have been imposed upon him. We would be opposed to the removal of Jim's satellite dish, and feel such a decision by the town board would reflect poorly on the town.

Name:	Signature:	Address:
<u>Patricia Sullivan</u>	<u>Patricia Sullivan</u>	<u>85 OLD ORCHARD LN</u>
<u>James Sullivan</u>	<u>James Sullivan</u>	<u>85 OLD ORCHARD LN</u>
<u>Ray Carmeli</u>	<u>Ray Carmeli</u>	<u>89 OLD ORCHARD LN</u>
<u>James Brown</u>	<u>James Brown</u>	<u>22 "AARD" LANE</u>
<u>Ray Kelly</u>	<u>Ray Kelly</u>	<u>6 CANDY LN</u>
<u>PAT GUMMERT</u>	<u>Pat Gummert</u>	<u>88 Orchard Lane</u>
<u>RICHARD POPSON</u>	<u>Richard Popson</u>	<u>83 OLD ORCHARD LANE</u>
<u>KAREN B. POPSON</u>	<u>Karen B. Popson</u>	<u>83 OLD ORCHARD LANE</u>
<u>Michael J. Sullivan</u>	<u>Michael J. Sullivan</u>	<u>84905 Orchard Park Rd</u>
<u>John Mitchell</u>	<u>John Mitchell</u>	<u>5411 Power Rd</u>
<u>James North</u>	<u>James North</u>	<u>65 Old Orchard Lane</u>
<u>Donald E. York</u>	<u>Donald E. York</u>	<u>65 Old Orchard Lane</u>
<u>Marcia Lewis</u>	<u>MARCIA LEWIS</u>	<u>90 Old Orchard Ln.</u>
<u>Edward Lewis</u>	<u>Edward Lewis</u>	<u>90 Old Orchard Ln.</u>
<u>Thomas M. Talty</u>	<u>THOMAS M TALT</u>	<u>4 PIERPARK, 11 ROAD</u>
<u>James K. Murray</u>	<u>JAMES K. MURRAY</u>	<u>80 OLD ORCHARD</u>

(Across the street to Robert)

We the undersigned would like to express our support for our neighbor,  
James Moffat at 84 Old Orchard Lane  
 to be able to maintain his rooftop satellite dish in its current state and location.

Jim is an excellent neighbor, and as evidenced in the included photo, the satellite dish is unobtrusive, and blends in well with the trees. Jim has a spinal cord injury, and requires the use of a wheelchair for mobility. Jim has regularly attended sporting events since he has lived in our neighborhood. Over the past winter, he developed respiratory complications after attending a sporting event which required extensive hospitalization and continued respiratory support. At this point in his life, attending future outdoor sporting events poses a medical risk for Jim. The combination of Jim's limited mobility, associated medical conditions, and the harsh winters in the Buffalo area is a unique combination. Jim's satellite dish provides him with access to activities and events that the majority of us take our ability to attend for granted.

We feel the antenna poses no inconvenience, danger, or aesthetic problems to our neighborhood. We are disturbed at the thought that the town of Orchard Park and/or our neighbors could not extend compassion for an individual with a disability who has found a means for enjoying his life under the set of physical limitations that have been imposed upon him. We would be opposed to the removal of Jim's satellite dish, and feel such a decision by the town board would reflect poorly on the town.

Name:	Signature:	Address:
BARBARA AMPLEMENT	Barbara Amplement	30 Mulberry Jr Orchardst
Diane Hanitz	Diane Hanitz	131 Old Orchard Lane 1412
PC RENO	[Signature]	18 Sugar Bush O P
Patricia Jans	Patricia Jans	46 Old Orchard Ln, O.P.
James S. Harris	James S. Harris	5305 Powers Rd O.P.
ALAZZANO	[Signature]	RD 2 ORCHARD LN, O.P.
Kathleen Lattanzio	Kathleen Lattanzio	18 Old Orchard, O.P.
PETER PIAZZA JR	Peter Piazza Jr	4454 Duerr Rd. O. Park
CINDY A. PIAZZA	[Signature]	4454 Duerr Rd O. Park
Lisa Cortzig	LISA CORTZIG	5280 Powers Rd O.P.
MATTHEW GORTZIG	Matthew Cortzig	5250 Powers Rd O.P.
Robert J. Howard	Robert J. Howard	5270 Powers Rd O.P. N.Y.
MARTHA M. Howard	Martha M. Howard	5270 Powers Rd O.P. N.Y.
William P. Howard	William P. Howard	5260 Powers Rd O.P. N.Y.
JOHN F. BIDNER	John F. Bidner	5275 Powers Road
Jean S. Bidner	Jean S. Bidner	5275 Powers Road

We the undersigned would like to express our support for our neighbor, **James Moffat at 84 Old Orchard Lane** to be able to maintain his rooftop satellite dish in its current state and location.

Jim is an excellent neighbor, and as evidenced in the included photo, the satellite dish is unobtrusive, and blends in well with the trees. Jim has a spinal cord injury, and requires the use of a wheelchair for mobility. Jim has regularly attended sporting events since he has lived in our neighborhood. Over the past winter, he developed respiratory complications after attending a sporting event which required extensive hospitalization and continued respiratory support. At this point in his life, attending future outdoor sporting events poses a medical risk for Jim. The combination of Jim's limited mobility, associated medical conditions, and the harsh winters in the Buffalo area is a unique combination. Jim's satellite dish provides him with access to activities and events that the majority of us take our ability to attend for granted.

We feel the antenna poses no inconvenience, danger, or aesthetic problems to our neighborhood. We are disturbed at the thought that the town of Orchard Park and/or our neighbors could not extend compassion for an individual with a disability who has found a means for enjoying his life under the set of physical limitations that have been imposed upon him. We would be opposed to the removal of Jim's satellite dish, and feel such a decision by the town board would reflect poorly on the town.

Name:	Signature:	Address:
Carole A Tucker	<i>Carole A Tucker</i>	79 Old Orchard C.P.
TERRANCE W. MARSH	<i>Terrance W. Marsh</i>	91 OLD ORCHARD LN
SUSAN L. MARSH	<i>Susan L. Marsh</i>	91 OLD ORCHARD LN.
TERRY R. TUCKER	<i>Terry R. Tucker</i>	79 Old Orchard Ln
GARY W. BARONE	<i>Gary W. Barone</i>	3 OLD SALEM CT.
Mary Jo Barone	<i>Mary Jo Barone</i>	3 Old Salem Ct
Shelby Filippi	<i>Shelby Filippi</i>	97 North Hill C.P.
TERRANCE W. MARSH	<i>Terrance W. Marsh</i>	111 HILLSIDE CR.
Marie T. Wagner	<i>Marie T. Wagner</i>	250 Independence Dr. C.P.
Mark J. Wallace	<i>Mark J. Wallace</i>	17 Lakeside S. O.P.
Kirk BARTON	<i>Kirk Barton</i>	38 Knob Hill O.P.
Tom Barton	<i>Tom Barton</i>	47 Lincoln Ave. O.P.
Dan Belmont	<i>Dan Belmont</i>	71 OLD ORCHARD LN.
JAMES EDWARDS	<i>James Edwards</i>	2 Pine Ter. O.P.
Robert Pratt	<i>Robert Pratt</i>	4724 Aiken C.P.
James C. Lewis	<i>James C. Lewis</i>	73 OLD ORCHARD LA. C.P.

The Chairman then asked if there was anyone in the audience who would wish to speak on behalf of granting this variance. (Twice)

No response.

The Chairman then asked if there was anyone in the audience who would wish to speak against the granting of this variance. (Twice)

No response.

The Chairman then asked if the Secretary had any communications either for or against granting of the variance.

The Secretary stated no communications have been received and the Erie County Department of Planning makes no recommendations.

Mr. Corcoran made a motion, seconded by Mr. Jarocha to GRANT this variance for the following reasons:

1. A practical difficulty has been established, that the problem was created by a builder's error.
2. The variance is not substantial in relationship to the requirement.
3. There will be no change to the character of the neighborhood.
4. The problem cannot be obviated by some other means.
5. The difficulty was not self created.

THE VOTE ON THE RESOLUTION TO GRANT THE VARIANCE BEING:

MC GUIRE	AYE
COON	AYE
ZWOLINSKI	AYE
CORCORAN	AYE
JAROCHA	AYE

THE VOTE BEING UNANIMOUS, THE VARIANCE IS HEREBY GRANTED.

7. ZBA File #42-91 James Culligan, 85 Old Orchard Lane (S.L. 96 MC 2409; SBL#184.09-5-60), Zoned R-2. Requesting variance to erect a 27.5 ft. high T.V. signal receiver. Max. height 12 ft., Sec. 144-24(A)4.

James Culligan, owner of the property and petitioner, appeared. Mr. Culligan is requesting this variance to install a dish antenna because when he moved into this property in June he was advised that Cable television reception was not available and has decided he would prefer a dish antenna over the cable reception even when it is made available. He had his property surveyed by a dish antenna company and determined where the best reception would be for the antenna. The location requires the dish to be placed 27.5 ft. high, which makes it in violation. There are several trees along the lot line that block the reception of a dish antenna in another location. Most of those trees are

owned by the Town of Orchard Park, which does not allow the petitioner to remove them.

There is a vacant lot adjoining his property, which when cleared to build on could possibly allow him to have the dish moved to another location.

He presented a letter to the Board from a real estate agent stating that the dish antenna will not depreciate the property values in his area. Scott Crandell from Crandell Satellite in Springville, New York, appeared for the petitioner as a technical advisor.

Mr. Crandell advised the Board that his company site surveyed Mr. Culligan's property to find a location on the property to allow the best reception for the dish antenna. They plan on installing a mesh antenna, 7½ ft. in diameter.

Mr. Corcoran discussed with the petitioner's dish antenna installer his knowledge regarding the satellite television reception. Mr. Crandell stated he is aware of the information Mr. Corcoran presented to him, but does not feel that the technology that is proposed is perfected enough to be used by residents.

The installer is trying to put the dish so it will not be seen, as much as possible.

Mr. Corcoran also discussed with the petitioner and the installer where he feels the dish can be installed and still have proper reception.

Mr. Zwolinski stated that a letter dated October 14, 1991 was made a part of the file, addressed to one of Mr. Culligan's neighbors, which states that cable service on Old Orchard Lane will be available within the next few weeks.

The Chairman stated that a petition signed by 36 neighbors, was made a part of file, which stated they are in opposition to the requested variance. There were approximately fifteen (15) letters sent to the Board in opposition to the granting of this variance because of aesthetic reasons and concerns over possible harmful rays from the dish antenna.

The petition and the letters were reviewed by all the Board members prior to the meeting.

Mr. Zwolinski stated in his opinion there are no harmful rays that come from a dish antenna.

Mr. Culligan stated he spoke to several of his neighbors a few months ago and at that time those neighbors had no objections to the installation of the dish antenna.

The Chairman then asked if there was anyone in the audience who would wish to speak on behalf of granting this variance. (Twice)

No response.

The Chairman then asked if there was anyone in the audience who would wish to speak against the granting of this variance. (Twice)



## OPPONENTS:

Neal Infante  
87 Old Orchard Lane  
Orchard Park, New York 14127

Vincent Colarossi  
105 Old Orchard Lane  
Orchard Park, New York 14127

Richard Ross  
101 Old Orchard Lane  
Orchard Park, New York 14127

Cindy Zolnowski  
96 Old Orchard Lane  
Orchard Park, New York 14127

Mike Bonetto  
111 Old Orchard Lane  
Orchard Park, New York 14127

Paul Bornhoeft  
92 Old Orchard Lane  
Orchard Park, New York 14127

Gary Bonnas  
72 Old Orchard Lane  
Orchard Park, New York 14127

Don Howard  
109 Old Orchard Lane  
Orchard Park, New York 14127

Mike Danielson  
73 Old Orchard Lane  
Orchard Park, New York 14127

Jeff Phillips  
110 Old Orchard Lane  
Orchard Park, New York 14127

The neighbors believe Mr. Culligan is a good neighbor and they have been put in a difficult position. They feel the local ordinances are for the protection of the neighborhoods. They have concerns over aesthetics, possible wind damage to the dish that could be a safety hazard, and generally want their neighborhood to remain as it is.

The Chairman then asked if the Secretary had any communications either for or against granting of the variance.

The Secretary stated no communications have been received and the Erie County Department of Planning makes no recommendations.

Mr. Zwolinski complimented the petitioner and the neighbors for the way they have handled this case and does not feel the relationships in the neighborhood will be effected by the decision on this case.

Mr. Coon does believe this requested variance is excessive.

Mr. Zwolinski made a motion, seconded by Mr. Corcoran to DENY this variance for the following reasons:

1. Options to receive television signals by commercial cable is available, so a practical difficulty does not exist.
2. The variance is substantial in relation to the requirement.
3. A ground mounted antenna may be installed when the adjoining vacant lot is cleared.
4. There is substantial opposition from adjoining property owners.
5. The problem was in part self created.
6. The character of the neighborhood will be changed by the granting of this variance.

THE VOTE ON THE RESOLUTION TO DENY THIS VARIANCE BEING:

MC GUIRE	AYE
COON	AYE
ZWOLINSKI	AYE
CORCORAN	AYE
JAROCHA	AYE

THE VOTE BEING UNANIMOUS, THE VARIANCE IS HEREBY DENIED.

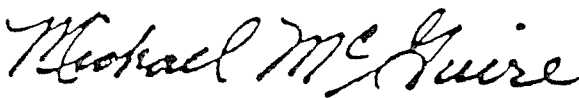
There being no further business to be presented to the Board, at this time, the Chairman, Michael Mc Guire, adjourned the meeting at 10:30 P.M.

DATED: 10/22/91

Respectfully submitted,

REVIEWED: MHM 10/23/91  
JMW 10/28/91

Marlene G. Peters  
Zoning Board of Appeals Secretary



Michael Mc Guire, Chairman

ZWOLINSKI	AYE
MC GUIRE	AYE
COON	AYE
CORCORAN	AYE
JAROCHA	AYE

THE VOTE BEING UNANIMOUS, THE VARIANCE IS HEREBY DENIED.

After the motion, the Chairman allowed a comment from the audience. Chris Siracuse, owner and technician of Tel-Star, Inc., 2477 Main Street, Varysburg, New York, stated that the dish was installed on the roof because of interference from the trees and because of potential vandalism as a result of the proximity to the stadium.

2. ZBA File #1-92 James & Patricia Culligan, 85 Old Orchard Lane, (S.L. 96 MC 2409; SBL #184.09-5-60, Zoned R-2. Requesting variance to erect an oversize TV signal receiver on roof. Ground mounted permanent foundation required, Sec. 144-24(A)4; roof mounted antennas max. 6 ft. above roof and 10 sq. ft. Section 144-21(B)1.

James Culligan and Charles Kelly, Esq. (1038 Abbott Road) appeared before the Board and explained that because of the trees on Mr. Culligan's property, as well as trees on the adjacent properties, it is not possible to ground-mount the receiving dish. It was noted that Mr. Culligan appeared before the Board on 10/15/91 at which time a variance to erect a 27.5 foot high receiver was denied. Mr. Sweet concurred that this request is a significant enough change from the 10/15/91 request to allow it to be heard as a newly-sought variance.

Mr. Kelly explained this dish is allowed per FCC regulations and submitted copies of reports and orders from the Federal Communications Commission and requested that the Board review these prior to making a decision.

Mr. Culligan stated that this property was purchased June 1991 at which time he was not aware that cable service was not available; however, it was further noted that cable service became available in late 1991. Mr. Culligan purchased this property because of its close proximity to Hamburg and stated that all alternate locations have been explored by experts who have deemed it is not possible to locate the dish within the ordinance requirements. A satellite dish over cable service is desired because of the abundance of stations available. The requested dish would be 8 feet above the roof line, with an 8 foot diameter dish.

Mr. McGuire noted he would abstain from the voting as Mr. Culligan's brother is a business associate of his.

The following citizen spoke in support of this variance:

Chris Siracuse, owner and technician for Tel-Star Satellite, Inc.,  
2477 Main Street, Varysburg, NY

The following citizens spoke in opposition of this variance:

Gary Bonnas, 72 Old Orchard Lane  
Neal Infante, 87 Old Orchard Lane  
Don Howard, 109 Old Orchard Lane  
Mike Bonetto, 111 Old Orchard Lane  
Richard Ross, 101 Old Orchard Lane  
Cynthia Zolnowski, 96 Old Orchard Lane  
Anita Crotti, 103 Old Orchard Lane  
Carol Hadson, 77 Old Orchard Lane  
Mike Danielson, 73 Old Orchard Lane

The neighbors stated the following reasons for opposing this variance: (1) aesthetically this dish would take away from the beauty of the area; (2) this may devalue the homes in the neighborhood; (3) television signals are available by commercial cable in the area; (4) this could be a potential safety hazard as a result of possible wind damage to the dish. Mr. Infante submitted 30 letters and a petition signed by 38 neighbors in opposition to this variance (on file). He also noted that the neighbors are opposed to any future variance requests for location of this dish that is not in accordance with Town laws.

Pursuant to section 239-m of the General Municipal Law, this application was referred to the Erie County Department of Planning. Their report, dated 12/30/91 and designated ZR-91-768, stated they had no recommendation.

The Board noted that the Orchard Park ordinance treats satellite dishes in the same fashion as any accessory structure -- the ordinance is intended to regulate dishes for aesthetic and safety reasons, not to keep them out of Orchard Park. They stated that the applicant's difficulty has been self created as he could have purchased other property in Orchard Park that was open and would accommodate a ground mounted satellite dish. It was also noted the strong opposition by neighbors.

Mr. Jarocha made a motion, seconded by Mr. Coon, to deny the variance request by James & Patricia Culligan to erect an oversize TV signal receiver on the roof at 85 Old Orchard Lane, based on the following findings:

1. Cable TV is now available in the area, thereby eliminating any practical difficulty in receiving appropriate TV reception in this area and providing a feasible alternative for the applicant.
2. The variance is substantial in relation to the requirement.
3. There is significant neighborhood opposition to granting this variance and there would be a significant change in the character of the neighborhood with the granting of this variance.
4. The problem is self created because the applicant recently purchased the property and could have purchased other open property in Orchard Park that could accommodate a satellite dish on the ground.

THE VOTE ON RESOLUTION TO DENY THE VARIANCE BEING:

Jan 21, 1992

ZWOLINSKI	AYE
MC GUIRE	ABSTAIN
COON	AYE
CORCORAN	AYE
JARROCHA	AYE

THE VOTE BEING 4-0-1, THE VARIANCE IS HEREBY DENIED.

3. ZBA File #2-92 Robert C. Rung, DBA Health Industries, Inc., 3155 Orchard Park Road (F.L. 460 T10 R7; SBL #153.00-7-38.1), Zoned B-2. Requesting variance to allow parking in front yard. Prohibited, Sec. 144-29(A)4.

Mr. Zwolinski acknowledged receipt of a letter dated 1/21/92 to Robert Sweet from Robert E. Roller, Comvest Consulting, Inc., 495 Aero Drive, Buffalo, New York 14225 (copy on file) that reads as follows:

"Mr. Robert Rung of my office had been scheduled to appear before the Zoning Board of Appeals on Tuesday, January 21, 1991 to request a parking variance on behalf of Health Industries, Inc. to allow for conversion of the building for retail purposes. Because of a family health situation, we have been unable to provide the proper drawings for the requested variance and would like to request that the Board consider tabling the request until the next Zoning Board of Appeals meeting."

Mr. Zwolinski stated this application will be heard at the March 16, 1992 Zoning Board of Appeals meeting.

As a new item of business, Mr. Zwolinski made a motion, seconded by Mr. McGuire, to support the Town Board's authorization that John Mills learn more about the 25.6 acres of available property located at Transit and Mile Strip Roads for future recreational use as this is an extremely worthy project. Mr. Zwolinski noted that future residential development in that section of Orchard Park may be substantial. Motion carried 5-0.

There being no further business to be presented to the Board, Mr. Zwolinski adjourned the meeting at 9:05 p.m.

DATED: 1/22/92

Respectfully submitted

Kathy Gearhart  
Acting Zoning Board of Appeals Secretary

Reviewed: LZ 1/27/92  
JMW 1/27/92

*L. M. Zwolinski*

Leon M. Zwolinski, Chairman

2. ZBA File #33-91 Fred J. Gosielewski, 139 Fox Meadow Drive (S.L. 96 MC 2465; SBL#162.19-3-6), Zoned R-1. Requesting variance to erect a T.V. signal receiver on roof of a dwelling. Ground mounted permanent foundation required. Sec. 144-24(A)4. Reserve Decision.

The Chairman advised the audience that this case was heard at the September meeting and that the only action to be taken tonight is to vote either in favor or against the requested variance. The two members who were not at the September meeting advised the Board that they have reviewed the file, inspected the property and listened to the tape of the September meeting and are prepared to vote on this case at this meeting.

The Chairman then asked if there was anyone in the audience who would wish to speak on behalf of granting this variance. (Twice)

No response.

The Chairman then asked if there was anyone in the audience who would wish to speak against the granting of this variance. (Twice)

No response.

The Chairman then asked if the Secretary had any communications either for or against granting of the variance.

The Secretary stated no communications have been received and the Erie County Department of Planning makes no recommendations.

Mr. Zwolinski complimented the petitioner and the Board for the fine job that was done to bring out all the facts in this case and also in reviewing the options available to the petitioner.

Mr. Zwolinski made a motion, seconded by Mr. Coon to GRANT this variance for the following reasons:

1. A practical difficulty has been established because of the sharp drop off of the lot from front to rear does not allow TV reception by a 12 ft. high ground mounted antenna anywhere in the rear of the yard.
2. No cable service will be available in the neighborhood in question in the foreseeable future.
3. A ground mounted antenna positioned to observe the required side and rear yard setbacks would need to be an objectionable 40 ft. high to allow reception of satellite TV signals.
4. The variance to allow the trial installed, roof mounted, TV dish receiver is the minimum practical relief that can be allowed.
5. There will be no substantial change in the character of the neighborhood because the roof mounted antenna, as presently sized and located, is not obtrusive and is partially screened from the front by trees and the roof line of the front of the house.

This variance is GRANTED with the following stipulations:

1. Size of the antenna and height of the installation may not be increased, and location may not be changed.
2. Antenna color must remain black with no signage.
3. Variance duration is only while Mr. Gosielewski is the owner of the property and house as presently constructed.

ON THE QUESTION:

Mr. Corcoran does believe this problem was self created by the petitioner not making himself aware of the exact size and shape of his property prior to purchasing it and does believe a tv receiver can be placed to the rear of the home.

THE VOTE ON THE RESOLUTION TO GRANT THIS VARIANCE WITH STIPULATIONS:

MC GUIRE	AYE
COON	AYE
ZWOLINSKI	AYE
CORCORAN	NAY
JAROCHA	NAY

THE VOTE BEING THREE (3) IN FAVOR AND TWO (2) IN OPPOSITION, THE VARIANCE IS HEREBY GRANTED WITH STIPULATIONS.

3. ZBA File #36-91 Richard & Marjorie Kohl, Vacant land east of 5981 Webster Road (F.L. 24 T9 R7; SBL#161.11-2-13.1), Zoned R-3. Requesting variance to divide land to form a lot 101.54 ft. wide containing an existing two (2) family dwelling. 125 ft. min. width, Sec. 144-9(B) Supp. Sch. of Reg., R-3 Zoning. Tabled at the request of the petitioner.

Richard Kohl, owner of the property, appeared. He is requesting this variance to allow him to divide a parcel of land which presently has a two (2) family home on it, to allow his son to build on a portion of this large parcel. This division will make the parcel that the existing home is on 101.54 ft. wide. The parcel that his son will build on will be a conforming lot. This property has been in his wife's family for over 80 years.

The Board discussed the dimensions of the entire parcel of land and different ways the lot could be subdivided.

The petitioner is unable to purchase additional property from the adjoining neighbor.

It was determined that the petitioner has owned the property since 1989.

Mr. Zwolinski stated that the petitioner owned this property prior to the change in the ordinance for the 125 ft. wide lot for a two (2) family home.

Mr. Zwolinski feels the Board should give the petitioner relief and allow this variance. He believes there is a hardship with the land since he cannot purchase any additional land. The size of the lot that the present two (2) family home