

2020-071

Request of Abdul Salam Hasan for a variance for property located at 1048 Orchard Park Road to erect a 6' privacy fence in side yard on corner lot (fence shall not exceed 4' in height in side yard)

Chairman Elling stated the property is on a corner lot. Code Enforcement Officer Doug Busse stated the backyard of this property is the side yard. The owner was not aware of the rules and regulations for the fence height and immediately filed for the variance when contacted by Code Enforcement.

Chairman Elling stated he is in receipt of letters from the NYSDOT and Erie County with no objections to the fence.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 1048 Orchard Park Road to erect a 6' privacy fence in side yard on corner lot with the condition the fence is 3' in from the sidewalk.

Ayes: All

Noes: None

Motion Carried

2020-073

Request of Olivia Miller and Ty Benthon for a variance for property located at 1 Brookedge Court to erect a 6' privacy fence in front and side yard on corner lot with 30' projection off house (fence shall not exceed 4' in height in front and side yard and shall not project more than 10' past house)

Chairman Elling stated this is a corner lot on Brookedge Court and Mineral Springs Road; the backyard of the property is the side yard.

Mr. Hughes questioned if the fence will be 3' off the sidewalk. Ms. Miller stated the fence is 3' off the sidewalk.

Chairman Elling stated he was in receipt of approval signatures from property owners at 1138 Mineral Springs and 7 Brookedge Court. Erie County has provided a letter with no objection to the fence, provided it is not constructed in the county right-of-way.

Motion by Elling, seconded by Hicks, to close the public hearing and grant a variance for property located at 1 Brookedge Court to erect a 6' privacy fence in front and side yard on corner lot with 30' projection off house with the condition the fence is 3' in from the sidewalk.

Ayes: All

Noes: None

Motion Carried

2020-075

Request of Blaine Shugarts for a variance for property located at 111 Carla Lane to install a driveway in front of house (parking in required setback)

Chairman Elling stated he was in receipt of a letter from Sean Hanley with no objection to the proposed driveway.

2020-075 (continued)

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 111 Carla Lane to install a driveway in front of house with the condition that drainage be coordinated with the Code Enforcement Office.

Ayes: All

Noes: None

Motion Carried

2020-077

Request of Robert Jemiolo for a variance for property located at 3385 Clinton Street to allow live music

Mr. Jemiolo stated he is requesting live music for the hours the business is open. Currently, the hours are condensed and are 10:00 am – midnight.

Chairman Elling stated he would not support live music for every hour of being open as the property is adjacent to residential homes. Mr. Jemiolo replied ideally, he would like live music during the hours of 4:00 pm – 11:00 pm, seven days per week.

Chairman Elling stated live music requests come back to the Zoning Board of Appeals yearly; any complaints on file in the Police Department are brought to the Zoning Boards attention. Chairman Elling suggested Monday – Thursday from 4:00 pm – 10:00 pm. Mr. Hughes suggested consistency and noted the hours of the Rusty Nickel were Monday - Thursday from 6:00 pm - 10:00 pm, Friday 6:00 pm - 11:00 pm, Saturday 2:00 pm - 11:00 pm and Sunday 4:00 pm - 8:00 pm.

Mr. Jemiolo requested longer hours on Saturday. Mr. Hughes replied he was not comfortable with 11 hours of live music and reiterated there should be consistency. Mr. Jemiolo would have an opportunity to reappear in a year and could request changes.

Chairman Elling questioned if the intent was for a live band. Mr. Jemiolo stated this is not necessarily a live band, but patrons collaborating.

Chairman Elling stated he was in receipt of a letter from the NYSDOT with no objection to the music but noted upon further review of the plans, the five parking spots in the front of the building are encroaching into the NYS highway right of way for Clinton Street. The parking spaces are to be eliminated by removing the paved parking area. Chairman Elling stated Mr. Jemiolo is to work with Code Enforcement and the NYSDOT to remedy the situation.

Chairman Elling referred to a letter from July 2017 that noted the rear parking lot was not in compliance with the stipulation of one year to comply and questioned if that has been done. Mr. Jemiolo stated this has not been done. A lot of money has been spent in the building and questioned if the lot could be stoned instead of paved. It is very hard during a pandemic to stay in business and the formula for parking to occupancy is outdated. Chairman Elling replied Mr. Jemiolo is to work with the Code Enforcement Office on what needs to be done in the back-parking lot to bring it to Code along with the front parking lot and the NYS requirements.

2020-077 (continued)

Motion by Hughes, seconded by Elling, to close the public hearing and grant a one year variance for property located at 3385 Clinton Street to allow live music with the following conditions: 1) Hours of music are as follows: Monday – Thursday 6:00 pm – 10:00 pm, Friday 6:00 pm – 11:00 pm, Saturday 2:00 pm – 11:00 pm and Sunday 4:00 pm – 8:00 pm; 2) the applicant is to meet with Code Enforcement to remedy the parking in the front and back.

On the question, Chairman Elling stated if business were to change, the petitioner should contact Code Enforcement and the Zoning Board of Appeals could revisit the time frames.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2020-080

Request of JSEK West Seneca c/o Sean Hopkins for a variance for property located at 1343, 1347 and 1353 Union Road and 0 Freemont Avenue for 10 off- street parking spaces (15 parking spaces required), 5.6' setback along Freemont Avenue and 10' setback along rear portion zoned R-65 (30' setback required)

Sean Hopkins of Hopkins, Sorgi and McCarthy was present on behalf of JSEK West Seneca and stated a year ago the Zoning Board of Appeals granted two variances. One was for the driveway setback on the north and another for vehicle use on the south. After site plan approval it was noted from the NYSDOT the preference was to have one driveway. Secondly, as you exit the car wash, you were forced to turn back into the car wash drive around and come out, making the exit awkward.

Carmina Wood and Morris reconfigured the site plan which requires three area variances. The pavement setback along Freemont shows 5.6' with 10' required. Along the rear the zoning code requires 30' setback and the plan is for 10' There is a 6' fence that wraps around the property to provide screening from the residential neighborhood with an extensive landscaping plan. The zoning code requires 15 parking spaces, and the plan calls for 10. There will only be a maximum of 5 employees at one time and this is a stand-alone car wash; patrons will not be parking outside.

Other changes made include one curb cut that was based on input from the NYSDOT. The Planning Board indicated the need for screening along Union Road and a screening wall was added. The applicant worked very closely with the Planning Board on the design. An updated elevation plan has been completed.

This building will be very nice and comply with the Union Road corridor. Previously on the site were dilapidated buildings. The neighbors requested the applicant remove the structures prior to construction and Mr. Spino complied to be a good neighbor. The project complies with the criteria and balancing test for consideration. The project was previously approved and is back before the Zoning Board due to the NYSDOT request of one curb cut.

2020-080 (continued)

Chairman Elling stated he was in receipt of a letter from the NYSDOT with no objections to the requested number of parking spaces and setback distances.

Ms. Greenan questioned if the modified plan has been approved by the Town Board and the Planning Board. Mr. Hopkins replied the site plan application is pending before the Planning Board and the project does not go back in front of the Town Board. The concept was informally proposed to the Planning Board and reflects their input.

Ms. Greenan stated she was not comfortable voting on the requests without Planning Board approval. Code Enforcement Officer Doug Busse stated the resubmittal process has been ongoing. Typically, the variance is granted before the Planning Board meeting. Mr. Hopkins stated legally the Planning Board should not be approving site plan until the variances have been granted. The Planning Board when approving a site plan need assurance the project complies with code. If a variance is needed and has not been granted it does not meet code. The applicant is comfortable this will receive Planning Board approval as they worked very closely together.

Ms. Greenan asked for confirmation of the Zoning Boards ability to grant the variances as this plan is contrary to what the Town Board and Planning Board has approved. Chairman Elling stated originally this application came to the Zoning Board for variances which were granted a year ago. The project has since gone to the Town Board and Planning Board for approval. Mr. Hopkins stated originally there were two approvals needed; a rezoning and special use permit and were granted in 2019. The rezoning and special use permit stand; the modification of the layout does not require going back to the Town Board. A variance application and site plan application were filed and granted in October and December. This request is following the same sequence and does not require Town Board approval.

Mr. Busse stated the Town Board has already approved to rezone the property, permitting the use. This will not go back to the Town Board. The application will go to the Planning Board for site plan; attempting the variance first for what they are proposing.

Ms. Hicks questioned if last years neighbor signatures suffice. Chairman Elling stated the project has already been approved.

Ms. Greenan stated this a modified plan and the neighbors have not seen it. Ms. Greenan questioned if the neighbors should be seeing an updated plan. Chairman Elling replied neighbors are not required to sign anything; this is a courtesy. The project was already in local papers and public notice has been completed. Mr. Hopkins stated the applicant has been in touch with the neighbors throughout the project process.

Motion by Elling, seconded by Hicks, to close the public hearing and grant a variance for property located at 1343, 1347 and 1353 Union Road and 0 Freemont Avenue for 10 off- street parking spaces 5.6' setback along Freemont Avenue and 10' setback along rear portion zoned R-65.

Ayes: Elling
Hicks
Hughes
Kapuscinski

Noes: Greenan

Motion Carried

2020-078

Request of Nicholas LaMarca for a variance for property located at 60 Treehaven Road to erect a 6' fence in front and side yard on corner lot (4' maximum allowable in front and side yard)

Motion by Elling, seconded by Hughes, to table this item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2020-079

Request of Kevin Harm for a variance for property located at 114 Collins Avenue to erect a 6' privacy fence in side yard (4' maximum allowable in side yard)

Mr. Harm stated he erected the fence to the end of the house not knowing the placement was to be 4' from back of the house. Mr. Harm received a notice from the Code Enforcement Officer and has applied for the variance.

Chairman Elling stated he was in receipt of neighbor letters with no objection from 105, 108, 118, 122 and 109 Collins Avenue.

Code Enforcement Office Doug Busse stated this is for the back corner to the front corner.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 114 Collins Avenue to erect a 6' privacy fence in side yard.

Ayes: All

Noes: None

Motion Carried

2020-081

Request of Flexlume c/o Lauren Griffin for a variance for property located at 7 Willowdale Drive to construct an LED sign located within 500' of residential zoning district (no LED signs within 500' of residential zoning)

Chairman Elling stated

A representative of Flexlume stated CSEA would like to replace the current sign with a LED message sign. The message board will be 3' x 8' and the same height as the existing sign.

Chairman Elling stated he was in receipt of approval signatures from property owners at 959 Union Road, 18, 11 and 30 Willowdale Drive. Chairman Elling is in receipt of a letter from the NYSDOT with no objection. Chairman Elling questioned if the petitioner was aware of the requirements such as dimming. A one year variance is usually given to check that the applicant is following the requirements. The representative stated they are aware and will comply.

2020-081 (continued)

Motion by Elling, seconded by Hicks, to close the public hearing and grant a one year variance for property located at 7 Willowdale Drive to construct an LED sign located within 500' of residential zoning district.

Ayes: All

Noes: None

Motion Carried

2020-078

Request of Nicholas LaMarca for a variance for property located at 60 Treehaven Road to erect a 6' fence in front and side yard on corner lot (4' maximum allowable in front and side yard)

Mr. LaMarca stated he recently purchased the home and is on a corner lot and would like a 6' fence for privacy and protection.

Chairman Elling stated he was in receipt of approval signatures from property owners at 65, 69, 58 and 79 Treehaven Road and noted, the fence is required to be 3' in from the sidewalk.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 60 Treehaven Road to erect a 6' fence in front and side yard on corner lot with the condition the fence is 3' in from the sidewalk.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Elling seconded by Hughes, to adjourn the meeting at 6:54 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary