

**Minutes of the Town of Perinton
Zoning Board of Appeals
Meeting of January 26, 2015**

Zoning Board Members present

Thomas Young, Chairman
Sam Space
Vincent Arcarese
John N. Moose
Melissa L. Barrett
Seana Sartori
Robin Ward Ezell

Conservation Board Members present

Ken Rainis
Chris Fredette

Town Officials present

Robert Place, Town Attorney
John Beck, Zoning Officer
Lori Stid, Zoning Board Clerk

Mr. Young called the meeting to order at 7:30 pm, introduced the Board and staff present, and explained the procedures.

Mr. Young states that the DPW has reviewed these requests and have no concerns on any of them.

1. Peter Grasso, owner of property located at 184 Jefferson Avenue, requesting a variance of the Town of Perinton Zoning ordinance Section 208-33 D(1), to allow a standby generator to set 11 feet from the side property line instead of 15 feet.
Said property being located in a Residential C District.
(this application has been carried over from 12/22/14, due to lack of quorum)

Ms. Barrett recuses herself from this application due to a conflict of interest and steps down from the dais.

Mr. Grasso presents his application to the Board. The generator is on the north side of the property and there is a 6' stockade fence already in place. He states that his next door neighbor at 178 Jefferson Avenue submitted a letter of support to the Board.

Mr. Space inquired if it would run all the time, and the applicant states no; it is only for emergency use if the electricity goes out. Mr. Space encourages the applicant to test it from time to time to make sure it works.

The remaining Board members had no question or comment.

Mr. Young asked for questions or comments from the Conservation Board, and there were none.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

The CED Dept. has no concerns with this application, a building permit to be issued within six months.

Mr. Young asked for questions or comments from the Attorney Place. Attorney Place feels this is a minor request.

Mr. Young asked for questions or comments from the audience, and there were none.

Mr. Space made a motion to grant a variance of the Town of Perinton Zoning ordinance Section 208-33 D(1), to allow a standby generator to set 11 feet from the side property line instead of 15 feet, subject to the following conditions:

1. Applicant to obtain a building permit within 6 months from meeting date. If you do not obtain your building permit prior to this date, the variance is null and void. If you decide that you are no longer going through with the proposal that required the variance on the property, please notify the Town (Zoning Board of Appeals Clerk) in writing of your decision, and we will mark the variance null & void.

There is no other way to obtain the benefit being sought. The location is well screened by an existing 6' stockade fence. The next door neighbor supports the request. There will not be any adverse physical or environmental effects caused by granting the variance. There will not be any undesirable change to the character of the neighborhood caused by granting this variance.

Mr. Arcarese seconds the motion.

Motion carries 6 – 0 with one abstention.

2. John & Amy Dilko, owners of property located at 455 Victor Road, requesting the following variances of the Town of Perinton Zoning Ordinance Section 208-14 G:

1. to allow an accessory building (shed) to be 256. Sq. ft. instead of 200 sq. ft., and
 2. to allow said accessory building to be located in the side yard instead of the rear yard.
- Said property being located in a Residential Sensitive District.

Mrs. Dilko states that they are a corner lot with approximately 1.8 acres of land. They are placing it in a location that is as far back as they can go. The exterior will match the home (same siding). It will have a raised door for easier access. There is a grade change in the yard and this is the best location.

Mr. Young states that the lot is heavily wooded.

Mr. Arcarese feels this is a minor request based on the lot size.

The remaining Board members had no question or comment.

Mr. Young asked for questions or comments from the Conservation Board. Mr. Rainis states that the Conservation Board issued comments as follows:

1. This outstructure is in the process of being constructed

2. The Conservation Board recommends that gutters be attached to the roof and collected drainage be discharged away from the slope reducing contact erosion and slope erosion from rain and surface water runoff. Note that there is a gravel “apron” around the building foundation.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

The CED Dept. has no concerns with this application, a building permit to be issued within six months.

Mr. Young asked for questions or comments from Attorney Place. Attorney Place feels this is a minor request given the size of the lot.

Mr. Young asked for questions or comments from the audience. Eileen Herbert, 450 Victor Road states that they live across the street and support this request. The lots are challenging with the grade.

Mr. Moose made a motion to grant the following variances of the Town of Perinton Zoning Ordinance Section 208-14 G:

1. to allow an accessory building (shed) to be 256. Sq. ft. instead of 200 sq. ft., and
2. to allow said accessory building to be located in the side yard instead of the rear yard, all subject to the following conditions:

1. Applicant to obtain a building permit within 6 months from meeting date. If you do not obtain your building permit prior to this date, the variance is null and void. If you decide that you are no longer going through with the proposal that required the variance on the property, please notify the Town (Zoning Board of Appeals Clerk) in writing of your decision, and we will mark the variance null & void.
2. Applicant to attach gutters to the roof and collected drainage to be discharged away from the slope.

There is no other way to obtain the benefit being sought. There will not be an undesirable change to the character of the neighborhood or nearby properties by granting this variance. This is the best location for the shed for ease of access and the slope of the property. This is not a substantial request given the size of the lot which is a corner lot with close to two acres of land.

Ms. Ezell seconds the motion.

Motion carries 7 – 0.

3. Erdem & Tara Cakandemir, owners of property located at 1 Old Drake Run, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 C (2), to allow a 6 foot fence to be located in front of the front setback instead of a 3 foot fence. Said property being located in a Residential B District.

Mr. Cakandemir states that this is a corner lot and has two front yards according to code. They were given a building permit for the fence and when the fence was inspected after installation the building inspector said it was set a few feet into the setback and only a 3’ fence would be allowed in that location. Mr. Cakandemir submits two photos into the record showing the fence from the street.

Mr. Young states that the Board received a letter from a neighbor across the street at 5 Killdeer Lane who was inquiring if some plantings of decorative trees and shrubs could be installed to improve the appearance of the fence. The applicant states yes; they have intended to do this but because of the time of year the fence was installed they need to wait for spring. There was a discussion amongst the Board members and the Cakandemirs’ as to types of plantings for this location. Mrs. Cakandemir states that she is concerned about installing arborvitae or pine trees because of the next door neighbor whose driveway is right there and it may block their view as they grow.

Ms. Ezell inquires what the length of the fencing is along Killdeer. The applicant states it is between 15' and 18'.

Mr. Young asked for questions or comments from the Conservation Board. Mr. Rainis states that the Conservation Board issued comments as follows:

1. Fencing is already installed.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

The CED Dept. has no concerns with this application; however, we would suggest that small evergreen trees be planted in front of the fence facing Killdeer Lane.

Mr. Arcarese made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-14 C (2), to allow a 6 foot fence to be located in front of the front setback instead of a 3 foot fence, subject to the following conditions:

1. Applicant to plant at least three arborvitae or similar type of shrubbery in front of the fence facing Killdeer Lane to help to screen the fence no later than July 31, 2015.

This applicant has two front yards according to code and they are looking for some privacy. The benefit cannot be achieved in any other means feasible to the applicant. The applicant has stated that they are willing to install some plantings to help to screen the fence, therefore there will not be any undesirable change to the neighborhood character or to nearby properties. There will not be any adverse physical or environmental effects on the property by granting this variance.

Ms. Ezell seconds the motion.

Motion carries 7 – 0.

4. Patio Enclosures, as agent for Kathleen Cunniffe, owner of property located at 40 East Pointe, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-32 D (1), to allow a proposed screen porch to set 15 feet from the rear property line instead of 20 feet per the approved subdivision map under Town Law Section 281. Said property being located in a Residential B District.

Ms. Cunniffe states that her contractor is not here yet and requests for her application to be heard after he arrives. Mr. Young agrees.

5. LandTech Surveying & Planning, PLLC, as agent for Malcho's 650 Moseley Rd, LLC, for property owned by JPC Holdings, LLC and located at 650 Moseley Road, requesting the following variances of the Town of Perinton Zoning Ordinance Section 208-42 D:

1. to allow a proposed new car wash to set 83.9 feet from the front property line instead of 85 feet, and
2. to allow a proposed new car wash to set 21 feet from the side property line instead of 30 feet.

Said property being located in a Commercial District.

Mr. Beck states that it has been determined by Code Enforcement & Development that the existing carwash sits 104' from pavement edge; therefore it meets code requirements and the variance for the front setback is not required.

Mr. Young states that they will review this request only for car wash to set 21' from side property line instead of 30'.

Adam Freeman, Land Tech Surveying & Planning, PLLC presents the application to the Board as per letter of intent as shown below:

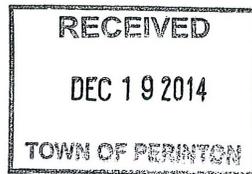
LANDTECH
SURVEYING & PLANNING P.L.L.C.

3708 St. Paul Boulevard
Rochester, NY 14617
Tel: (585) 442-9902
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www.landtechny.com

December 18, 2014

Project Number: 14212

Zoning Board of Appeals
Town of Perinton
1350 Turk Hill Road
Fairport, NY 1496



RE: Malcho's Car Wash
650 Moseley Road

On behalf of Kenneth Malcho, we submit the following for consideration of Area Variances from the Zoning Board of Appeals:

- Twelve (12) copies of this Letter of Intent
- Twelve (12) copies of the Application Form
- Twelve (12) copies of the Short EAF form
- Twelve (12) copies of the Site Plan drawings, reduced to fit 11x17
- Twelve (12) copies of the Owner Authorization to Make Application form
- Twelve (12) copies of a letter of support from the adjacent property owner
- A check for \$100 for the Commercial Area Variance application fee

The 1.5 acre parcel (tax account number 166.170-0002-029) is located at the southeast corner of the intersection of Pittsford Palmyra Road (NYS Route 31) and Moseley Road (NYS Route 250) and is zoned Commercial. The property has been operating as a gas station for more than 30 years and the car wash was added in 1985, after Area Variances and a Special Use Permit were granted by the Zoning Board. The site was completely re-constructed in 1997 to the current layout, with fuel pumps, convenience store with drive-thru and car wash, following Area Variances and a Special Use Permit from the Zoning Board and Town Board, respectively.

The proposal is to demolish the existing car wash and construct a new car wash in the same general location and modify the Moseley Road entrance and drive-thru entrance; the convenience store, drive-thru and fuel pumps will remain unchanged. The car wash is more than 15 years old and instead of replacing the old equipment with new equipment, in the same building, the operator would like to construct a new style of car wash. To allow construction of the new car wash, multiple Town approvals are required: front & side setback variances from the Zoning Board of Appeals, Site Plan approval from the Planning Board, which is scheduled to be heard at the January 21, 2015 meeting, and a Special Use Permit from the Town Board, which was granted at their December 10, 2014 meeting.

The following two area variances are required, both from §208-42.D of Town Code:

- Allow a front setback of 83.9 feet, whereas code requires 85 feet.
- Allow a side setback of 21 feet, whereas code requires 30 feet.

The new building will be constructed with the same front setback as the existing building; however, changes to the highway right of way and Town Code have resulted in the need for a variance. The building will also be constructed with the same separation distance to the existing pump islands, but will be a couple feet wider than the existing building, reducing the side setback from 22.7 feet to 21.0 feet. The proposed variances are very minor and will not result in any negative impacts to the surrounding area. The neighbor to the east, Fairview Veterinary Hospital, is most affected by the proposed construction and the owner has reviewed the plan and supports the application. Therefore, the requested variances are appropriate for the site and should be granted by the Board.

Please add this application to the Zoning Board of Appeals' January 26, 2015 meeting agenda. We look forward to further discussing the merits of this proposal at that time. In the meantime, please contact me with any questions or comments.

They are not demolishing the existing car wash; they are modifying and improving the existing one. The existing building sits 22.7' from the side property line and the new building will be a couple of feet wider. The building can't move away from the property line because of the site constraints; existing pumps, etc. The neighbor to the east at 3735 Pittsford-Palmyra Road (New Monroe Real Estate Limited) has signed a letter stating that they have no problem with this request which was submitted with the variance application.

Mr. Young states that the Planning Board issued comments as follows:

The Planning Board recommends approval of the aforementioned variances because the request for the setback changes is minimal and will not affect the site. This request is also consistent with our Site Plan approval.

- 1) Please confirm that the front setback measurement is not required to be from the edge of pavement, not the property line. If the front setback measurement is measured from the property line, then the request would be deemed a pre-existing, non conforming request because the existing building foundation at the front setback line is not moving.**
- 2) The existing car wash is being renovated. The additional space that is being added is needed for the use of the new building and adding this space to the west of the building (opposed to the requested east end) will negatively affect the traffic site flow.**

The remaining Board members had no question or comment.

Mr. Young asked for questions or comments from the Conservation Board.

Mr. Rainis states that the Conservation Boards' environmental concerns were addressed at the time of site plan approval with the Planning Board.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- 1. This application received a Special Permit from the Town Board on December 10, 2014, and site plan approval from the Planning Board on January 21, 2015.**
- 2. Per a discussion at the Planning Board meeting it was determined that the existing car wash is not being demolished, and they are modifying the existing footprint, but the existing front setback will not change, Therefore, the request for the front setback variance is not required.**
- 3. A Building Permit to be issued within one year.**

Mr. Young asked for questions or comments from Attorney Place, and there were none.

Mr. Young asked for questions or comments from the audience, and there were none.

Mr. Young made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-42 D, to allow a car wash to set 21 feet from the side property line instead of 30 feet, subject to the following conditions:

1. Applicant to obtain a building permit within one year.

This is a minor request to expand one side of the existing carwash in connection with the renovation of it. There will not be any undesirable to the character of the neighborhood or nearby properties. It will not be a detriment to nearby properties. The benefit cannot be achieved in any other manner feasible to the applicant because of the way the carwash has to be sited on the property due to the existing gas pumps, etc. There will not be any adverse effect to the physical or environmental conditions of the neighborhood.

Mr. Moose seconds the motion.

Motion carries 7 – 0.

6. BME Associates, as agent for Lyons National Bank, contract vendee of property owned by DiPrima Properties II, LLC and located at northeast corner of O'Connor Road and Fairport Road intersection (tax id#152.11-1-36 from the resubdivision of Lots 2 and 3 of CVS Subdivision), requesting the following variances of the Town of Perinton Zoning Ordinance:

1. Section 208-14 E (2) to allow the front setback (Fairport Road) to be 30 feet from the pavement edge instead of 100 feet.
2. Section 208- 42D to allow the front setback (O'Connor Road) to be 48 feet instead of 85 feet.
3. Section 208-42 H to allow the front landscaping buffer to be 4 feet instead of 50 feet.
4. Section 208-16 C (1) (c) to not have front setback screening landscaped berm for parking instead of the required screened landscaped berm.
5. Section 208-16 A (11) to allow the drive up teller stacking space to be 9 reservoir spaces (3 per lane) instead of 30 reservoir spaces (10 per lane).

Said property being located in a Commercial District.

Ryan Destro, BME Associates, presented the application to the Board as per letter of intent as shown below. With him is Tom Kime & Michael Colacino, Lyons National Bank and Jeff Ashline, Mossien Architects.

BME | ASSOCIATES
ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS

December 19, 2014

Zoning Board of Appeals
Town of Perinton
1350 Turk Hill Road
Fairport, NY 14450



**Re: Lyons National Bank-Perinton
Area Variances**

2438

Dear Board Members:

On behalf of Lyons National Bank, we are requesting area variances for the above-referenced project which is located within a Commercial (CO) zoning district. The proposed project site includes frontage along the north side of Fairport Road (NYS Route 31F), as well as on the east side of the new extension of O'Connor Road, completed by the Town of Perinton in 2014. We request to appear at your January 26, 2015 meeting and have enclosed the following application materials for your review:

- Twelve (12) copies of the Application Form
- Twelve (12) copies the Site Plan
- Twelve (12) copies of the Developable Building Area Exhibit
- Twelve (12) copies of the Authorization to Make Application
- Twelve (12) copies of the Short Form EAF
- Twelve (12) copies of the Architectural Elevations
- \$100.00 Application Fee

Prior to the final design of this project, the Town of Perinton expressed to the applicant that the Commercial Zoning District, where the site is located, is anticipated to be rezoned to a Mixed Use zoning district in 2015 as part of the goals of the Town Comprehensive Plan. The applicant reviewed the proposed project in consultation with the Town staff and the subsequent design was intended to meet the requirements of the future Mixed Use zoning regulations. However, due to the uncertainty of the time table for the Town Board to rezone the property and the applicant's desire to construct as soon as possible, it was recommended by the Town staff to apply for the necessary variances under the current zoning. Therefore, this application is requesting the following area variances from the corresponding sections of the Town Code, as shown below:

1. Front Setback reduction on Fairport Road from 100' to 30' and on O'Connor Road from 85' to 48':

Town Code §208-14.E(2) - Application of Regulations-Setback Exceptions:

“On all lots fronting on four-lane highways (Fairport Road), the front setback shall be not less than 100 feet from the edge of the pavement nearest the front lot line.”

Town Code §208-42.D - Regulations applicable to all Restricted Business, Industrial and Commercial Districts:

“The minimum front setback shall be 85 feet...”

2. Front Landscape Setback reduction from 50' to 4':

Town Code §208-42H - Regulations applicable to all Restricted Business, Industrial and Commercial Districts:

“Landscaping. The front setback shall include an area at least 50 feet in depth along the highway or highways bordering the lot, which shall be suitably landscaped and maintained by the owner. Owners of all existing developed lots shall have three years from the effective date of this chapter to plant similar landscaped areas. Shrubs, hedges, berms, fences or walls shall be planted or constructed so as to screen parking areas from highways wherever topography will feasibly permit such screening.”

3. Exclusion of the front setback screening requirement:

Town Code §208-16C(1)(c) – Off-street Parking and Loading:

“The front setback area shall be screened using a landscaped berm; such berm shall be no less than five feet high and 40 feet wide at the base. The design shall be in accordance with the Town of Perinton Design Criteria and Construction Specifications.”

4. Reduction of required ATM stacking spaces from 30 (10 per lane), to 9 (3 per lane):

Town Code §208-16A(11) - Off-street Parking and Loading:

“For drive-through or drive-up windows or establishments such as drive-up tellers, drive-up restaurant windows, etc., a minimum of 10 reservoir spaces for stacking of vehicles shall be provided.”

For your consideration, we offer the following information in response to the five (5) factors that the Zoning Board of Appeals must consider for area variance requests:

- A. Whether the variations requested are substantial in relation to the requirement set forth in the Zoning Ordinance.**

While the proposed variations under the current Commercial zoning regulations could be considered a substantial; we feel that they are not substantial when considering the Town of Perinton's intent to rezone the property to a Mixed Use Zoning District. As mentioned above, the applicant reviewed the proposed project in consultation with the Town staff and the subsequent design was intended to meet the requirements of the future Mixed Use zoning regulations.

B. Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to adjoining properties will be created, if the variance is granted.

An undesirable change in the character of the neighborhood will not be created, nor will a detriment to the adjoining properties be incurred by granting the requested variances. The proposed project is for a new commercial business (bank branch) which is a permitted use under the current and anticipated future zoning regulations.

C. Whether the benefit sought by the applicant can be achieved by some reasonable, alternate method, other than a variance.

The proposed project cannot be constructed without obtaining the requested area variances. The new extension of O'Connor Road, completed by the Town of Perinton in 2014, introduced a second front setback constraint to the property, along with the existing Fairport Road front setback requirement. The result is a virtually non-developable site per the required setbacks (see enclosed Developable Building Area Exhibit). Approximately ±28,852 S.F. (0.66 acres) of the project site's former boundary limits were appropriated by the Town of Perinton for the new O'Connor Road right-of-way. The project site now has an area of 50,388 S.F. (1.16 acres) which includes a net developable building area of only 6,561 S.F. (0.15 acres). Lyon's National Bank has also confirmed that the proposed ATM stacking area which provides room for 3 vehicles in each lane satisfies the demand witnessed at their other local branches.

D. Whether the alleged difficulty was self created (this will not necessarily preclude the granting of an area variance).

The alleged difficulty was not self-created. Rather it is a result of the revised O'Connor Road right-of-way, which has rendered the site virtually undevelopable under the current zoning requirements. The proposed design is in conformance with the Town of Perinton's anticipated rezoning of the site to Mixed Use, which encourages the location of the proposed structures to be closer to the road frontage than the current zoning allows, promoting a building corridor atmosphere. Also, as mentioned above, the proposed ATM stacking area which provides room for 3 vehicles in each lane satisfies the demand witnessed at their other local branches. The existing code requirement for an ATM vehicle stacking area of 10 vehicles per lane (30 total) far exceeds the industry requirements.

E. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The proposed variances, if granted will allow for the construction of a new aesthetically pleasing Lyons National Bank branch. The proposed project will revive an existing lot(s) which previously included an existing, abandoned Hess gas station. The proposed project also represents an allowable use for the property under both the existing and anticipated future zoning regulations.

Mr. Young states that the Planning Board issued comments as follows:

The Planning Board recommends approval of the aforementioned variances

- 1-3) The Planning Board recommends approval of the aforementioned variance because the Applicant designed the site with the anticipation of the upcoming Re-Zoning of the Fairport Road Corridor. This was done under the advisement of the Town Staff. The current zoning requires these aforementioned variance requests, however under the new Mixed Use Zoning, these dimensions and design will fall within the guideline and the requests would not require variances.**
- 4) The Planning Board recommends approval of the aforementioned variance because the request is adequate for the application and previous similar requests have been granted in the past. This use will not be an intense use and we feel 9 spaces per lane will be adequate. It will also work well with the proposed traffic flow and site design.**

Mr. Young supports the request and feels that the application was very thorough. The architectural renderings of the proposed building look great. Mr. Young thanks the applicant for submitting the developable building area exhibit which was very helpful in showing what the developable space is on the parcel and how that relates to the proposal.

The remaining Board members support the proposal and feel that the application was thorough and feel that the project will look nice.

Mr. Young asked for questions or comments from the Conservation Board.

Mr. Rainis states that the Conservation Board has reviewed this project and has no environmental concerns with the variances proposal.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- 1. The requested variance will be consistent with the anticipated rezoning of the Fairport Road corridor.**
- 2. The CED Dept. has no concerns with this application, a building permit to be issued with one year from final site plan approval.**

Mr. Young asked for questions or comments from Attorney Place. Attorney Place states that a SEQR determination is required for requests 3, 4, and 5. Attorney Place states that this project was granted final site plan approval on 1/7/15; however the Town neglected to post the property which is required. The Town is suggesting the applicant come back on 2/18/15 to the Planning Board for a public hearing as the notice was defective. Mr. Place states that John Beck has verified that the posting occurred properly for the variances.

Mr. Young asked for questions or comments from the audience, and there were none.

Mr. Young made a motion to grant a Negative Declaration of SEQRA for:

1. Section 208-42 H to allow the front landscaping buffer to be 4 feet instead of 50 feet.
2. Section 208-16 C (1) (c) to not have front setback screening landscaped berm for parking instead of the required screened landscaped berm.
3. Section 208-16 A (11) to allow the drive up teller stacking space to be 9 reservoir spaces (3 per lane) instead of 30 reservoir spaces (10 per lane).

Findings of fact are adopted from letter of intent from BME to the Zoning Board of Appeals dated 12/19/14 and received by the Town on 12/19/14 which is a part of the record. There is no other way to achieve the benefit being sought as it would be very difficult to develop this area without variances. Approving the requests will not tend to depreciate the value of adjacent property, will not create a hazard to the health, safety or general welfare of the community, will not be a detriment to the flow of traffic in the vicinity or alter the character of the neighborhood.

Mr. Space seconds the motion.

Motion carries 7 – 0.

Mr. Young made a motion to grant the following variances of the Town of Perinton Zoning Ordinance:

1. Section 208-14 E (2) to allow the front setback (Fairport Road) to be 30 feet from the pavement edge instead of 100 feet.
2. Section 208- 42D to allow the front setback (O'Connor Road) to be 48 feet instead of 85 feet.
3. Section 208-42 H to allow the front landscaping buffer to be 4 feet instead of 50 feet.
4. Section 208-16 C (1) (c) to not have front setback screening landscaped berm for parking instead of the required screened landscaped berm.
5. Section 208-16 A (11) to allow the drive up teller stacking space to be 9 reservoir spaces (3 per lane) instead of 30 reservoir spaces (10 per lane), all subject to the following conditions:

1. Applicant to obtain final site plan approval from the Planning Board.
2. Applicant to obtain a building permit within one year of final site plan approval.

Findings of fact are adopted from letter of intent from BME to the Zoning Board of Appeals dated 12/19/14 and received by the Town on 12/19/14 which is a part of the record. It will not create an undesirable change to the character of the neighborhood or nearby properties. The benefit the applicant is seeking cannot be achieved in any other manner to develop the parcel. The variances are not substantial for proposed mixed use zoning for this parcel. The variances will not have an adverse effect on the physical or environmental conditions of the neighborhood.

Mr. Space seconds the motion.

Motion carries 7 – 0.

7. Kathleen Miller, contract vendee for property located at 126 Shagbark Way, (tax id # 166.15-2-46 - currently vacant property), requesting a Special Permit of the Town of Perinton Zoning Ordinance 208-32 A(7) (Customary Home Occupation), to allow a Wedding Cake /Cookie Business from the home. Said property being located in a Residential B District.

Mrs. Miller presents her application to the Board as per letter of intent as shown below:

12.31.14

Lori Stid, Zoning and Planning Board Clerk

Town of Perinton

I am applying for approval of having a business in the basement of my home. At this point it is in the preliminary stages and has not reached a contractual agreement with Aristo Builders and the Hickory Woods Townhome subdivision on Shagbark Way.

Let me tell you a little about myself and my business. I have had two in home businesses in the Town of Penfield from 1991-1998 and then again in 2008-present. My prior business name was Penfield Patisserie and my current business name is Incredibly Edible Cookie Company. We currently live in Ettrick Forest subdivision off Scribner Rd. with property values of \$400,000+ homes. We have never had a formal complaint made against us and have provided you with this information, in case you wanted to check with the Town of Penfield.

Our business has a minimal amount of clients stopping by to pick-up orders, with most orders shipped via us dropping off to FedEx or ourselves making the deliveries. We do *not* have a retail set up in the home, for any drive-bys. We also provide pre-appointment made onsite consultations for wedding and large event planning. This is done for client tastings and design discussions for wedding cakes. At this point it has been approx 2-4 monthly consultations, with some months none. Our hours of operation, are M-F 9-5pm and Saturdays 9-2pm. We sometimes have appointments on Sundays for out of town clients only; which is about 2-3 times yearly. Consultations will be held as they are now in the main dining area of the upstairs residence.

We have not and will not have signage on the home in anyway. Our advertising will not have our address from now on and the same will be applied to new business cards. We also have an online ecommerce website at www.incrediblyediblecookiecompany.com.

The townhome we are interested in currently is a center unit amongst three units total @ 126 Shagbark Way. The basement portion used for the business will be approx. 600 sq ft. of the 1600+ sq foot area. If for some reason we don't go forward, with Aristo Builders and Hickory Woods, we hope we could have this process and hopefully the approval be applied for another area in Perinton. When you reach your decision, could you please advise us of the ruling on this?

Thank you for your consideration for myself and Incredibly Edible Cookie Company!

Sincerely,

Kathleen J Miller, Sole Proprietor, Owner

They have not signed a contract with the builder; this is a preliminary step.

Mr. Young inquired if they are proposing to operate the business according to the terms of the letter of intent which shows that there will be approximately 2 – 4 monthly consultations, hours of operation are Monday through Friday from 9 AM – 5 PM, and Saturdays 9 AM – 2 PM, occasional appointments on Sundays (approximately 2 – 3 per year) , approximately 2 – 4 monthly consultations which will be done in the main dining area of the upstairs residence, no signage, advertising will not use property address, the kitchen area will be about 600 sf in the basement area, and there are no other employees.

Mr. Young states that if this is approved, it would be approved for one year from the date of the Certificate of Occupancy and a Fire Marshal inspection has been completed for the business. After that year is up, the applicant would need to come back to the ZBA for review for renewal of Special Use Permit at which time the Board would determine if the renewals could be done administratively in the future.

Mr. Space feels the letter of intent was very informative.

Ms. Sartori inquires if there is a Home Owners Association and how they feel about the proposed business. The applicant states that the builder owns and operates the HOA and he has no objection and this would be grandfathered in.

Ms. Ezell inquired how many cars can park in the driveway. The applicant states that two cars will be able to be in the driveway and her vehicles can be in the garage. The builder has stated that there will be parking pads for other vehicles to park within the subdivision. Ms. Ezell asks if she feels the number of clients would remain the same from her current business operated out of her home in Penfield and the applicant feels it will be the same.

Mr. Young asked for questions or comments from the Conservation Board, and there were none.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- 1. This request is for a proposed new house, the CED Dept. has no concerns with the proposed business.**
- 2. This will require a Fire Marshall inspection prior to the business to operate, additionally; the applicant should provide a copy of Health Dept. certificate to the Code Enforcement Dept.**
- 3. The permit shall expire one year after the Certificate of Occupancy.**

Mr. Young asked for questions or comments from Attorney Place. Attorney Place states that a SEQR determination is required.

Mr. Young asked for questions or comments from the audience and there were none.

Mr. Young made a motion to grant a Negative Declaration of SEQR.

The use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts. The public health, safety, general welfare or order of the Town will not be adversely affected by the proposed use in its location. The proposed use will not interfere with the preservation of the general character of the neighborhood in which such building is to be placed or use is to be conducted and that the proposed use will in fact, be compatible with its surroundings and with the character of the neighborhood and of the community. The use will not depreciate the value of adjacent property nor be detrimental to the flow of traffic in the vicinity.

Granting this use will not depreciate the value of adjacent property, nor create a hazard to health, safety or general welfare of the community, nor be detrimental to the flow of traffic in the vicinity, nor alter the essential character of the neighborhood, nor be detrimental to the residents of the neighborhood.

Mr. Space seconds the motion.

Motion carries 7 – 0.

Mr. Young made a motion to grant a Special Permit of the Town of Perinton Zoning Ordinance 208-32 A(7) (Customary Home Occupation), to allow a Wedding Cake /Cookie Business from the home, subject to the following conditions:

1. Subject to the terms of letter of intent submitted to the Town on 12/31/14(see attached)
2. Hours of operation are from Monday through Friday from 9 AM to 5 PM, Saturdays from 9 AM – 2 PM, and occasional appointment on Sundays (approximately 2 – 3 per year).
3. Approximately 2 – 4 monthly consultations which shall be done in the main dining area of the proposed new home.
4. No signage for the business at the property.
5. Advertising will not have the property address on it.
6. Much of the business is done online.
7. There are no other employees.
8. The kitchen area will be approximately 600 sf in the basement area of the proposed new home.
9. A Fire Marshall inspection is required prior to the business opening.

10. Applicant to provide a copy of Health Dept. Certificate to the Code Enforcement Dept.
11. The permit shall expire one year after the Certificate of Occupancy is issued for the home, at which time the applicant is required to request to renew the permit through the Zoning Board of Appeals.

The use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts. The public health, safety, general welfare or order of the Town will not be adversely affected by the proposed use in its location. The proposed use will not interfere with the preservation of the general character of the neighborhood in which such building is to be placed or use is to be conducted and that the proposed use will in fact, be compatible with its surroundings and with the character of the neighborhood and of the community. The use will not depreciate the value of adjacent property nor be detrimental to the flow of traffic in the vicinity. Granting this use will not depreciate the value of adjacent property, nor create a hazard to health, safety or general welfare of the community, nor be detrimental to the flow of traffic in the vicinity, nor alter the essential character of the neighborhood, nor be detrimental to the residents of the neighborhood.

Mr. Space seconds the motion.

Motion carries 7 – 0.

Mrs. Miller inquired if the approval is specific to this parcel or if it can be for any parcel in Perinton. Mr. Young states that it is specific to this property.

Mr. Young recalled application #4 for:

Patio Enclosures, as agent for Kathleen Cunniffe, owner of property located at 40 East Pointe, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-32 D (1), to allow a proposed screen porch to set 15 feet from the rear property line instead of 20 feet per the approved subdivision map under Town Law Section 281. Said property being located in a Residential B District.

Mrs. Cunniffe states that her contractor has not arrived and apologizes to the Board and the audience. She would like her contractor to be present for the request.

There was a discussion on if the Board would meet or not next month as no applications have been submitted. The applicant and audience members are encouraged to contact the Zoning Board of Appeals Clerk to determine if the Board will hold a meeting next month to hear this request.

Discussion:

Minutes 11/24/14

Mr. Arcarese made a motion to approve the minutes of 11/24/14 as submitted.

Mr. Moose seconds the motion.

Motion carries 7 – 0.

Minutes 12/22/14

Mr. Arcarese made a motion to approve the minutes of 12/22/14 as amended.

Ms. Ezell seconds the motion.

Motion carries 4 – 0, with Messrs. Young, Space and Moose abstaining due to absence.

There being no further business before the Board, the meeting adjourned at 8:30 PM.

Respectfully Submitted,

Lori L. Stid, Clerk