

**Minutes of the Town of Perinton
Zoning Board of Appeals
Meeting of February 24, 2014**

Zoning Board Members present

Thomas Young, Chairman
Sam Space
Vincent Arcarese
John N. Moose
Robin Ward Ezell

Absent

Melissa L. Barrett
Seana Sartori

Conservation Board Members present

Robert Salmon

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. He states that Be Walters application #5 has been rescheduled to 3/24/14 and will not be heard tonight.

1. Dan & Lynne Hawthorne, owners of property located at 67 Lambeth Loop, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 C (3), to amend a previously approved variance dated January 28, 2013, to allow a portion of the existing fence to be up to 8' 4" instead of 6 feet as previously approved. Said property being located in a Residential B District.

Mr. Hawthorne states that due to the drop in grade, the height needs to be higher than the original approval.

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

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 DPW had no comment on this application and CED issued comments as follows:

1. **Town staff typically does not support a variance request to increase the height of a fence over 6 feet height, as required by code. The proposed application is to increase a portion of the fence to be up to 8 feet, 4 inches. There is a substantial grade difference from east to west. Additionally, the fence is screened by trees, backs up to a heavily traveled road, and is not surrounded by nearby neighbors.**
2. **Because of the proposed grade change, the fence height appears to be consistent with the existing fences adjacent to this property. Town staff has no concerns with this application and recommends approval.**

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

The Board members support the request and have no concerns regarding this application.

Mr. Moose made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-14 C (3), to amend a previously approved variance dated January 28, 2013, to allow a portion of the existing fence to be up to 8' 4" instead of 6 feet as previously approved.

This property is unique in that there is a substantial grade difference from east to west. Additionally, the fence is screened by trees, backs up to a heavily traveled road, and is not surrounded by nearby neighbors. Because of the grade change, the fence height appears to be consistent with the existing fences adjacent to this property. There is no other way to obtain the benefit being sought. There will not be any undesirable change to the character of the neighborhood or nearby properties.

Mr. Arcarese seconds the motion.

Motion carries 5 – 0.

2. John Wojtila - Zaremba Group, as agent for Anthony DiPrima, owner of property located at 1304 Fairport Road (tax id # 152.11-1-33) and Tony DiPrima Properties, LLC, owner of a portion of property located at 1314 Fairport Road (tax id #152.11-1-32), requesting the following variances of the Town of Perinton Zoning Ordinance to allow a proposed CVS Pharmacy:

(1) Section 208-42 (B) (2), to allow the lot width (Fairport Road) to be 161.27 feet instead of 300 feet.

(2) Section 208-42 H, to allow the front landscape buffer along Fairport Road and O'Connor Road to be 20 feet instead of 50 feet. (3) Section 208-41 A (4) (a), to allow the drive-thru stacking to be 5 spaces instead of 10 spaces. Said property being located in a Commercial District.

3. John Wojtila - Zaremba Group, as agent for Anthony DiPrima, owner of property located at 1304 Fairport Road (tax id # 152.11-1-33) and Tony DiPrima Properties, LLC, owner of a portion of property located at 1314 Fairport Road (tax id #152.11-1-32), requesting a Special Permit under Section 208- 41 A(4) (a), to allow a drive-thru pick up window for a proposed CVS pharmacy. Said property being located in a Commercial District.

Mr. Young called for the applicant and no one was present. The Board will call for the applicant again at the end of the meeting.

4. Richard Fee, owner of property located at 2 Shannon Glen, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 G, to allow a 10 x 20 shed to be located in the front yard (Kilkenny Ct.) instead of the rear yard, and Section 208-31 D (1), to allow said shed to set 51 feet from the front property line (Kilkenny Ct.) instead of 70 feet. Said property being located in a Residential A District.

Mr. Fee states that according to Code he has two front yards. The shed is 10 X 20 and is already in place. The position where he has placed the shed has the least adverse effects to the neighborhood and allows easier use of the shed. He will install a retaining wall, which he already has a permit from the Building Dept. for. He will also be installing greenery around the outside perimeter of the shed to help with screening.

Mr. Place inquires what kind of screening. Mr. Fee states perhaps evergreens; although he currently has 17 Rose of Sharon already planted.

Mr. Young inquires if the shed is already in place, and the applicant states yes.

Ms. Ezell asks if the retaining wall already exists. The applicant states yes, but he will be removing most of it and re-build it, as he has to slide the building over slightly.

Mr. Beck states that the Town has been working with the applicant regarding the retaining wall.

Ms. Ezell asks if the neighbors have offered any comments, and the applicant states no.

Mr. Young asked for questions or comments from the Conservation Board. Mr. Salmon inquires whose fence it is in the back, and the applicant states it is his. Mr. Salmon asks if they plan to extend it to help with screening, and the applicant states no, as that would also require a variance. Mr. Salmon asks what he plans to do with the extra soil that will be created by sliding the shed over. The applicant states that he will dispose of it on his property in the low spots.

Mr. Young asked for questions or comments from CED.

Mr. Beck states that DPW had no comment on this application and CED issued comments as follows:

- 1. Town staff recommends that evergreen screening be placed along the along the side facing Kilkenny Court and along the rear facing the adjacent neighbor's property.**
- 2. A building permit is to be issued within 30 days, and any screening should be planted within 60 days. Failure to comply with these timeframes will result in variance nullification, and will necessitate removal of the shed from the property.**

There was a discussion amongst the Board members about weather conditions and concern of planting before it is warm enough outside. Mr. Beck agreed to extend the recommendation to have the plantings installed by May 31, 2014, and to work with the applicant if the weather was such that the plantings would not survive if planted by this date.

Mr. Young asked for questions or comments from Attorney Place. Mr. Place asks CED if they wanted specificity regarding the proposed plantings, and Mr. Beck states that CED can work with the applicant regarding this.

Mr. Moose asks how much time the applicant has once he applies for a building permit before the project has to be completed. Mr. Beck states that a shed permit is for 6 months.

Mr. Arcarese made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-14 G, to allow a 10 x 20 shed to be located in the front yard (Kilkenny Ct.) instead of the rear yard, and Section 208-31 D (1), to allow said shed to set 51 feet from the front property line (Kilkenny Ct.) instead of 70 feet, subject to the following conditions::

1. Evergreen screening be placed along the along the side facing Kilkenny Court and along the rear facing the adjacent neighbor's property in an amount/spacing to the satisfaction of CED.
2. Applicant to obtain building permit within 30 days from meeting date. If you do not obtain your building permit prior to this date, the variance is null and void.
3. The landscaping/screening is to be planted by May 31, 2014; applicant to work with CED if there are any weather related concerns as to viability of plant survival regarding planting by this date, and may be allowed to go beyond May 31, 2014 if CED feels it is appropriate for the survival of the plantings.

The benefit cannot be achieved in any other manner, as the applicant has two front yards because it is a corner lot. There will not be an undesirable change to the character of the neighborhood or nearby properties. The request is not substantial. There will not be any adverse physical or environmental effects. The difficulty is not self-created, as he has two front yards.

Mr. Space seconds the motion.

Motion carries 5 - 0

5. Mamasan's Perinton LLC, owner of property located at 721,725, 735,741,747, and 751 Pittsford Victor Road and 6 Laird Lane, requesting the following variances of the Town of Perinton Zoning Ordinance:

1. Section 208-42 D:
 - a. To allow the front setback for existing building #711 to be 15.7 feet instead of 85 feet, and to allow the side setback to be 15.67 feet instead of 85 feet.
 - b. To allow the front setback for existing building #750 to be 5.91 feet instead of 85 feet.
 - c. To allow the front setback for existing building #735 to be 16.79 feet instead of 85 feet.
 - d. To allow the front setback for proposed building #1 to be 11.08 feet instead of 85 feet.
 - e. To allow the front setback for proposed building #2 to be 17.05 feet instead of 85 feet.
2. Section 208-42 G, to allow the access points to be 180 feet apart instead of 350 feet.
3. Section 208-25, to allow the buffer area to be 15 feet (west side), instead of 50 feet.
4. Section 208-16 C (2), to allow the front parking setback to be 8 feet instead of 85 feet, and to allow the parking side setback to be 15 feet instead of 30 feet.

5. Section 208-14 C(3), to allow a proposed fence to be 8 feet in height instead of 6 feet.
Said property being located in a Commercial District.

Recall of #2. John Wojtila - Zaremba Group, as agent for Anthony DiPrima, owner of property located at 1304 Fairport Road (tax id # 152.11-1-33) and Tony DiPrima Properties, LLC, owner of a portion of property located at 1314 Fairport Road (tax id #152.11-1-32), requesting the following variances of the Town of Perinton Zoning Ordinance to allow a proposed CVS Pharmacy:

- (1) Section 208-42 (B) (2), to allow the lot width (Fairport Road) to be 161.27 feet instead of 300 feet.
- (2) Section 208-42 H, to allow the front landscape buffer along Fairport Road and O'Connor Road to be 20 feet instead of 50 feet.
- (3) Section 208-41 A (4) (a), to allow the drive-thru stacking to be 5 spaces instead of 10 spaces.
Said property being located in a Commercial District.

Recall of #3. John Wojtila - Zaremba Group, as agent for Anthony DiPrima, owner of property located at 1304 Fairport Road (tax id # 152.11-1-33) and Tony DiPrima Properties, LLC, owner of a portion of property located at 1314 Fairport Road (tax id #152.11-1-32), requesting a Special Permit under Section 208- 41 A(4) (a), to allow a drive-thru pick up window for a proposed CVS pharmacy.
Said property being located in a Commercial District.

Mr. Young called for the applicant and no one was present. There was a discussion amongst the Board members and Town Attorney on if they could make a decision without the applicant being present. Mr. Place states that this proposal has been brought before the Town Board and the Planning Board and there have not been any objections.

Mr. Young asked for questions or comments from the audience, and there were none, as there were no audience members present.

Mr. Young states that they will discuss both requests at the same time. Mr. Young states that they received comments from the Planning Board, as shown below:

The Planning Board has granted preliminary site plan approval for CVS on 2/19/14. One condition of approval was for the applicant to obtain any necessary zoning variances from the Zoning Board of Appeals.

The Board recommends approval of all the requested variances. The Board feels the approved plan is a well engineered plan and works well with what was proposed.

- (1) The Board recommends approval of the aforementioned requested variance because it is a pre-existing non-conforming "housekeeping" variance.**
- (2) The Board recommends approval of the aforementioned requested variance because if the site was zoned "mixed use" (which it is working that way) this request would not need a variance. In addition, the current parking design in the front is a result of a compromise with the Town and the Applicant and the outcome leaves a 20 LF landscape buffer.**
- (3) The Planning Board recommends approval of the aforementioned variance because the request is adequate for the application. This use will not be an intense use and we feel 5 spaces will be adequate. The applicant will provide data to the planning board at their next approval hearing to support the 5 space request. In addition, a similar variance request was granted for Walgreen's**

The Planning Board recommends approval of the aforementioned permit request because the request is adequate for the application. This use will not be an intense use and we feel a drive thru design works well on the site. In addition, a similar permit request was granted for Walgreen's.

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

CB has reviewed drawings and supporting documents for this site and have met with the applicant's representatives. CB has previously provided a Negative Declaration for the purposes of SEQR to the PB for their meeting. CB has no further concerns for these applications.

Mr. Young asked for questions or comments from CED.

Mr. Beck states that DPW had no comment on this application and CED issued comments as follows:

- 1. The Planning Board granted preliminary approval for this project on February 19, 2014, and a special permit was granted by the Town Board on September 25, 2013.**
- 2. This proposal is consistent with the eventual Mixed Use District zoning, an area rezoning that is anticipated to occur this spring. It will enhance the Fairport Road corridor.**
- 3. A building permit is to be issued within one year.**

Mr. Young asked for questions or comments from Attorney Place. Attorney Place states that the request to reduce the number of stacking spaces for the drive-thru is consistent with the applications we have received for other drug stores in the Town. A SEQR determination is required for this unlisted action. You can make one SEQR determination for both applications.

Mr. Space made a motion to grant a Negative Declaration of SEQR for the variances and the Special Use Permit.

- (1) The use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts.
- (2) The public health, safety, general welfare, or order of the Town will not be adversely affected by the proposed use in its location.
- (3) 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 in general, particularly with regard to visibility, scale and overall appearance.
- (4) The physical characteristics and topography of the proposed site make it suitable for the proposed special use.
- (5) The proposed special use provides sufficient landscaping and/or other forms of buffering to protect surrounding land uses.
- (6) The property has sufficient, appropriate, and adequate area for the use, as well as reasonably anticipated operation thereof.
- (7) Access to facilities is adequate for the estimated traffic generated by the proposed use on public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion.
- (8) Adequate parking and internal traffic circulation can be accommodated on the property in compliance with other sections of the Code, taking into account adequate buffering and landscaping.

Mr. Young seconds the motion.

Motion carries 5 – 0.

Mr. Space made a motion to grant the following variances of the Town of Perinton Zoning Ordinance to allow a proposed CVS Pharmacy:

- (1) Section 208-42 (B) (2), to allow the lot width (Fairport Road) to be 161.27 feet instead of 300 feet.

(2) Section 208-42 H, to allow the front landscape buffer along Fairport Road and O'Connor Road to be 20 feet instead of 50 feet.

(3) Section 208-41 A (4) (a), to allow the drive-thru stacking to be 5 spaces instead of 10 spaces, all subject to the following conditions:

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

The benefit cannot be achieved in any other manner feasible to the applicant. There will not be any undesirable change to the character of the neighborhood; it is the opposite. This will make this area more desirable. There will not be any adverse physical or environmental effects caused by granting these variances. This project has been before multiple Boards in the Town and have received approval from them for this project. Other businesses in Town have received similar stacking variances. It is a self-created issue, but this proposal will help to improve a deteriorating neighborhood.

Mr. Young seconds the motion.

Motion carries 5 – 0.

Mr. Space made a motion to grant a Special Permit under Section 208- 41 A(4) (a), to allow a drive-thru pick up window for a proposed CVS pharmacy, subject to the following conditions:

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

This proposal is consistent with Section 208-54D.

(1) The use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts.

(2) The public health, safety, general welfare or order of the Town will not be adversely affected by the proposed use in its location.

(3) 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 in general, particularly with regard to visibility, scale and overall appearance.

(4) The physical characteristics and topography of the proposed site make it suitable for the proposed special use.

(5) The proposed special use provides sufficient landscaping and/or other forms of buffering to protect surrounding land uses.

(6) The property has sufficient, appropriate and adequate area for the use, as well as reasonably anticipated operation thereof.

(7) Access to facilities is adequate for the estimated vehicular and pedestrian traffic generated by the proposed use on public streets and sidewalks, so as to assure public safety and to avoid traffic congestion.

(8) Adequate parking and internal vehicular and pedestrian traffic circulation can be accommodated on the property in compliance with other sections of the Code, taking into account adequate buffering and landscaping.

Mr. Young seconds the motion.

Motion carries 5 – 0.

Discussion: Minutes 1/27/14

Mr. Young made a motion to approve the minutes of 1/27/14 as submitted.

Mr. Space seconds the motion.

Motion carries 5 – 0.

There being no further business before the Board, the meeting adjourned at 8:06 PM.

Respectfully Submitted,

Lori L. Stid, Clerk