

**Minutes of the Town of Perinton
Zoning Board of Appeals
Meeting of September 23, 2013**

Zoning Board Members present

Vincent Arcarese
John N. Moose
Melissa L. Barrett
Seana Sartori
Robin Ward Ezell

Absent

Thomas Young, Chairman
Sam Space

Conservation Board Members present

Chris Fredette
Robert Salmon

Town Officials present

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

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

NEW APPLICATIONS:

1. James E. Bates, Jr., as agent for John Felton, owner of parcel located at 433 Garnsey Road, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-30 D (1), to allow an existing garage to set 14.4' from the northwest side property line and 14.9' from the southwest and further to allow the existing house to set 14.9' from the east side property line all instead of 15 feet. Said property being located in a Residential AA & A District.

Mr. Arcarese states that Terrence C. Brown-Steiner, Esq, Attorney for Mr. John Felton hand delivered a letter to the Town this afternoon requesting an adjournment of the variance request from tonight's agenda. His letter goes on to indicate that he anticipates a complete withdrawal of the request in the near future. Along with his letter he enclosed the original signed letter by Mr. John Felton where he indicates that he is unsure if he intends to proceed with the sale of the property, and therefore wishes to defer the variance request.

Mr. Arcarese made a motion to table this request to the October 28, 2013 ZBA meeting at the request of the property owner and his attorney.

Mr. Moose seconds the motion.

Motion carries 5 – 0.

2. 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 (13'x13') screen porch to set 8 feet from the rear property line instead of 20 feet per the approved subdivision map. Said property being located in a Residential B District.

Ms. Cuniffe presented her application to the Board. There is currently already a 12 X 12 concrete patio in this location. The screened porch will sit over the top of this existing pad. She is looking for sun and insect protection to enjoy the outdoors in comfort. She states that she has problems with both of her knees and it is difficult for her to descend the step to get outside to the patio now. Her home is the north side of a duplex townhouse. To the north there is a 10' tall dense shrubbery (arborvitae) that has been installed by the neighbor and an 8' tall stockade fence to the east of that installed by another neighbor. To the west is a 6' tall stockade fence which obstructs that neighbor's view of her property. To the south, the occupant of the other half of her duplex has installed a 6' high privacy picket fence. All of these installations lessen the visual impact of her proposed request. She has no pets. There will be insignificant auditory impact. Her contractor is Dave Valeria.

Mr. Moose inquires who owns the fences and hedgerow. The applicant states that she does not own them; neighbors do.

Ms. Barrett inquires when she moved into this property. The applicant states that she moved into the property in June of this year.

Ms. Ezell states that she looked at the renderings that were submitted as part of the packet, and she wants to point out that they are not to scale. The home is 34' in length and the slab is 12'. The proposal is 1/3 of the house. What was submitted makes it look much larger than it really is because it is not to scale.

Mr. Place inquired what the height of the screened porch will be. Mr. Valerio states that he will match the existing height of the walls; somewhere around 14'. Mr. Place inquired what the existing roofline of the house is. Mr. Valerio states that the peak of this proposed structure won't come anywhere near the height of the house peak. Mr. Place inquired if the shingles and siding will match. Mr. Valerio states that he will build it so that it looks like it has always been there; everything will match as closely as possible. The structure is made of composite decking and will be maintenance free.

Mr. Arcarese asked if there will be a door from the outside to enter this structure. Mr. Valerio states yes. Mr. Arcarese inquired if there will be any shrubbery installed. The applicant states yes; once it is complete.

Mr. Moose inquired if she has heard anything from her neighbors. The applicant states that no one has spoken to her about it, but she did receive copy of comments from the Town that were submitted by the neighbor at 54 East Pointe who object.

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

Mr. Arcarese asked for questions or comments from CED. Mr. Beck states that the DPW has no questions or comments on this request.

Mr. Beck states that CED issued comments as follows:

The area is well-screened. The request is not substantial due to the existing fence to the rear and the screening to the north. The CED does not believe there will be a negative visual impact to the surrounding properties. The existing patio is concrete slab on grade. The structure would be 13' x 13' and would basically enclose the patio. A building permit to be issued within one year.

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

Mr. Moose asked Attorney Place if they approved this, could they make it a requirement that if any of the neighbors removed existing shrubbery or existing fences that the applicant install fencing or shrubbery to replace same.

Mr. Arcarese asked for questions or comments from the audience.

Mr. Frank Sheroshek, 54 East Pointe is opposed to the request and he reviewed the letter, 4 photographs and aerial photo that he submitted to the Town which are a part of the record, as shown below:

September 19, 2013

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

Re: Opposition to Variance sought for 40 East Pointe property

Dear Zoning Board Members:

We are the owners of 54 East Pointe, the property that is situated directly to the rear of 40 East Pointe and is most directly affected by Kathleen Cunniffe's application for a variance. This letter is written to indicate our strong opposition to the variance being sought by Ms. Cunniffe for her property. We also plan on attending the public hearing on September 23rd to provide our input.

To give the Board some background, my wife Marina and I (I came along in 2004) have been the original property owners of 54 East Pointe ever since it was built in 1998. Ms. Cunniffe's property (40 East Pointe) was also built in the same year by the same builder (i.e. Al Rayburn of Allen Homes) who was quite familiar with the required setback standards and its space impact on both properties. Over the years we have installed a fence and trees between our properties to protect, preserve, and enhance the living space we have come to enjoy. We have always been and continue to be on good terms with our surrounding neighbors since we've lived here. With that said, we have a good familiarity and perspective on the history of both properties and the neighborhood.

We are objecting to the proposed variance to the rear setback based on the following factors:

1. The requested variance would be "very substantial"

This would result in an 8' setback from our property line. We consider that much too close to our living space as it is extreme and quite intrusive/invasive. Ms. Cunniffe's request for an 8' setback is very severe and would represent a significant deviation from and violation of three established standards for property setbacks that have worked satisfactorily over the years:

- **The existing 21' rear setback that she now has for 40 East Pointe.** An 8' setback would be 38% of what Ms. Cunniffe now has (i.e. a 62% reduction). That puts it too close to our property.
- **The 20' "minimum" rear setback established for each of the residences per the Subdivision map** (i.e. in which Ms. Cunniffe resides). Nearly all of those other subdivision properties have actual rear setbacks well in excess of this minimum established for that subdivision during its planning phase and noted on its planning map. An 8' setback would be 40% of this minimum (i.e. a 60% reduction) and represents a clear and inconsistent departure from property setbacks enjoyed by other homes in the neighborhood.
- **The 15' rear set back established by Zoning Ordinance Section 208-32D (1) for a Class B Residential District.** An 8' setback would be 53% (i.e. a 47% reduction) of the minimum set by this zoning ordinance that has been in place since the 1950's.

I have taken the time to walk the neighborhood and view maps for properties from the entire end to end of East Pointe, the subdivision in which Ms. Cunniffe's property resides, along with the subdivision for our own property. The bottom line is that I was unable to find any home which had a small rear setback anywhere close to that being sought by Ms. Cunniffe. The requested variance is not consistent with rear setbacks for other properties in the neighborhood.

It's our opinion that if the board approves of the variance it would open Pandora's Box for the town of Perinton when evaluating future variance requests.

2. The requested variance would create an undesirable change to the character of the neighborhood and nearby properties

- The 40 East Pointe property is a townhouse and the subdivision it resides within is located on a "cul de sac" with other townhouses/patio homes. It is typical for townhouse/patio homes to be on space constrained lots with little room for expansions. Ms. Cunniffe's property is the perfect example as it is situated in the most "tightly packed" section of that subdivision and just does not lend itself to building additional structures on that site.
- None of the other properties in Ms. Cunniffe's subdivision have rear connecting structures on them. The addition of the proposed (13' x 13') structure is quite a departure from a 15 year precedent and will further increase the "building density" on already the most tightly configured lot in that subdivision.
- Take a look at the photos on her application. The sheer size of the proposed structure is rather large and out of character for a small lot of this size. The facade of the proposed structure would be very imposing on us and dramatically degrade our line of sight view. Her proposed porch enclosure design would be better suited to a lot which has more yardage and greater setback.
- All of those other townhouses on that cul de sac with the exception of 40 East Pointe have considerable existing rear setbacks that rear up against common land which acts as a buffer for the developments behind them so privacy is not an issue for those other townhouses. However, the 40 East Pointe property is far different than the others because it tightly butts up against a homeowner's property (i.e. ours). Ms. Cunniffe only has 21 feet of setback to work with so it is not practical to pursue the proposed variance because it would result in a structure that degrades the character of the living space between our properties.

3. The variance will be detrimental to our nearby property

Our property is most directly affected. There is no question that the proposed variance and proposed enclosure will cause a significant infringement upon our backyard view, our privacy, quiet enjoyment, and living space.

- Please refer to the attached pictures which show the existing vantage point from our property facing to the rear of 40 East Pointe. As you can see by the following photos, we are already within an uncomfortable close proximity to Ms. Cunniffe's 40 East Pointe property.

- The first picture shows the existing backyard view from our deck facing towards the rear of the 40 East Pointe property.
 - The second picture shows the existing view from the deck door of our dining room.
 - The third picture shows an even closer view from the fence line bordering our properties.
 - The 4th picture shows the view from the second floor bedroom window.
 - The last picture shows an aerial view of the space between the 2 properties.
- We viewed the plans for the proposed structure and were without a doubt shocked by its immense size and configuration. Again we were very shocked. Its size and extremely imposing facade would rise well above the top of our existing fence to feel like it is “on top of us”. The top peak of the roofline would extend nearly halfway up the existing roof line for the 40 East Pointe residence. Even planting tall arborvitaes would not be enough to obstruct this kind of view. In the strongest terms I can say this is clearly not acceptable to us. In good conscience, I simply cannot imagine any building like this being 13’ closer to or further away from our current living environment. It represents a clear and significant encroachment on our privacy and living space. Whether we are sitting in our kitchen, on our deck, or in the bedroom, it would present the feeling that we are “on display” and creates an uncomfortable situation that further worsens our backyard view, privacy, quiet enjoyment and living space.
 - Our backyard “line of sight view” would change from viewing a roof that tapers in our direction (see pictures we attached) to a tall looming façade that feels like it is “in our face”. That would be very uncomfortable for us and dramatically changes the dynamic our living environment.
 - A proposed 8’ setback along with the proposed immense structure would degrade the quality of the living environment atmosphere we have enjoyed in our backyard for nearly 15 years.
 - This could affect both our property resale value and potential buyers if we were to sell our home.
 - One of the comments several people have made when visiting our residence over the years is how close the 40 East Pointe property is and that they feel like they are “on display”. The board members are welcome to visit our residence to further evaluate that perception and see for themselves.
 - We also have a pet dog (approx. 7yrs old) who is sensitive to anything that affects his backyard living environment even those happenings on the other side of our fence. The closer proximity of structure has the potential to cause him to bark more frequently which would upset other neighbors and in turn make us uncomfortable.
- 4. It could potentially have an adverse impact on the physical and environmental conditions of the neighborhood**
- The rear property of 40 East Pointe has a downward slope toward the corner of our backyard and the property adjacent to Ms. Cunniffe. During times of inclement wet weather and heavy rains, there is tendency for water to runoff and accumulate in those low areas. We are concerned that the design of the proposed structure especially the direction of the tapered roof and its large roof area would promote more runoff water to the lower area of the yard and further aggravate runoff and drainage conditions.

- The close proximity of an 8' setback to our wooden fence especially with such a large proposed structure has us immensely concerned about safety issues in the event of a fire. If her proposed enclosure were ever to catch fire it would increase the likelihood of our wooden fence catching fire since it would be only 8' away.

5. The owner at 40 East Pointe could achieve the desired results by other means than a variance. There are always alternatives.

- Ms. Cunniffe could investigate the feasibility of both a scaled down, less imposing porch enclosure along with locating it off to the side instead of the rear of the townhouse. The neighbor on the side adjacent to 40 East Pointe already has rather tall arborvitae to diminish any view and privacy issues.
- She could look into altering the design from an extremely imposing enclosure to a retractable overhang (to provide shade from the sun) with a design that stays within the 15' min setback per Zoning Ordinance Section 208-32D (1).

The bottom line is Ms. Cunniffe should reconsider her variance request and instead re-evaluate options that respect her neighbor's living space and don't violate established zoning standards that have worked well for our neighborhood for years.

6. The difficulty resulting in the application for a variance and a porch enclosure by Ms. Cunniffe is "self-created"

Ms. Cunniffe just "recently" purchased the 40 East Pointe property within the last few months. When she made her decision to purchase 40 East Pointe, it's our belief she would have clearly known at that time of any site constraints and the implications of how the zoning ordinance and setbacks would have affected any plans for building on that property. Considering the "recentness" of this purchase, Ms. Cunniffe's hardship associated with this site constrained property is "self-imposed" as she would have had the option of purchasing other properties that would have provided better space accommodations for adding any structure/ enclosure of the type she proposes.

Respectfully, we request that the Board reject Ms. Cunniffe's request for a variance. We ask that the board do their job and honor the setbacks established by the Zoning Ordinance and Subdivision maps. They have worked successfully for the past 15 years in our neighborhood. Those zoning rules are there for a reason. Please respect and enforce them to preserve the balance of our neighborhood.

He doesn't think that the height of the fences shown are accurate; he thinks that they are 6' not 8'. Viewing this large structure will be in his private space. This is a significant reduction of the setback and is not consistent with the neighborhood. He feels that his home and family will be dramatically impacted if this is allowed. This is too close. He has reviewed the minutes from when the subdivision was approved, and the Planning Board felt that 20' was the appropriate setback.

Mr. Place inquired if there is a HOA. Mr. Shiroshok states that not everyone is a member. Mr. Place inquired how far his home is from the rear setback, and Mr. Shiroshok states that it is 34' from the fence line. Mr. Shiroshok states that he feels that the home is already too close to the lot line and this will make it all that much worse. He does not feel that adding arborvitae will help.

Mr. Arcarese closes the public hearing.

Ms. Ezell made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-32 D(1), to allow a proposed (13'x13') screen porch to set 8 feet from the rear property line instead of 20 feet per the approved subdivision map, subject to the following conditions:

1. Applicant to obtain a building permit within one year from today. 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. If any of the existing neighbors remove fencing/hedgerow/arborvitae that exists today which help to mitigate the impact of this structure, the applicant is to replace with similar or same.

Ms. Ezell states that she feels that the effort that Mr. Shiroshok has gone through to research and explain his objections are admirable, but she feels that this is Ms. Cunniffe's property and that this structure is not objectionable. Granting this variance will not set a precedent; there are numerous variances that have been granted similar to this nature in the Town of Perinton. She does not feel that granting this variance will create an undesirable change to the character of the neighborhood or nearby properties. Many of the approvals that this Board has granted to allow larger sheds and/or garages are partly motivated to assist the applicant in storing outside items inside, and this will also accomplish this. Ms. Conifer will be storing her patio furniture that now sits outside on the slab inside and will offer much more privacy to both her and her neighbors than what exists today. Because of her knee surgeries, this will offer a straight line access without stairs to this sitting area for her enjoyment. The

Conservation Board has reviewed this request and there will be no adverse physical or environmental hazards caused by granting this variance. Town staff has reviewed this request and don't believe that there will be a negative visual impact to the surrounding property. It is a self created difficulty, but it is not outweighed by the benefit that will be to her and to her property. The concrete pad exists today and putting a roof over it and enclosing it is a substantial improvement to the property; not a detriment. The remaining area that will be left after this structure is built will allow for maintenance and privacy. The applicant could put up an awning, but that would not allow for protection from insects and sun. There was discussion about her moving it to the side of her house, but that would require a great deal of construction and cost as the door leading to the existing outside patio is already there.

Ms. Sartori seconds the motion.

Motion fails. Ms. Ezell and Ms. Sartori in favor. Mr. Arcarese, Mr. Moose, and Ms. Barrett opposed.

Mr. Place states that this application will be carried over to the 10/28/13 ZBA agenda as a pended item.

Ms. Barrett asks the applicant to submit more detailed elevations to the Town regarding this request.

Mr. Place asks Mr. Shiroshok if he is ok with the ZBA members to be allowed on to his property to view this proposed project from that location. Mr. Shiroshok states that he is fine with that.

3. Carl Lloyd, owner of property located at 575 Thayer Road, requesting a variance of the Town of Perinton Zoning Ordinance Section 208- 14 R (2), to allow a proposed garage addition (28.5' x 28.83') 821.6 sq. ft. to the existing 400 sq. ft. garage; the total garage to be 1221.6 sq. ft. instead of 600 sq. ft. Said property being located in a Residential Sensitive District.

Mr. Lloyd states that he bought the property in May, 2012 and at the time thought that he would be able to store his two cars in the garage along with various lawn equipment, saw, snow blower, etc, but there is not enough room for all of it. He feels it is unsightly to keep all of this equipment outside and he wishes to keep the cars inside also. He is concerned about theft and wants everything inside.

Mr. Arcarese asked if the Board approves this would the applicant be ok with a condition of no outside storage. The applicant states that he has a utility trailer that will not fit into the garage, even with the addition. He is willing to store this behind the garage.

The Board members felt that the application was thorough and had no questions or comments.

Mr. Arcarese asked for questions or comments from the Conservation Board. Ms. Fredette states that the Planning Board granted preliminary and final site plan approval on 9/18/13. She questioned the slope of the proposed driveway; she inquires if he will need a retaining wall. The applicant states that this issue came up when they were designing this project. They moved the driveway to a flat area 4' behind the current garage to minimize that issue. It will be a flat area. There is a slope issue around the maple tree that is halfway between the garage and the road, which he does not wish to remove. They are going to put an 18" high retaining wall to shield that from fill. There will be a retaining wall along the edge of the new asphalt. As you go down the hill towards the road, the retaining wall will have to go higher, and it will be a maximum of about 18". Ms. Fredette states that this application does not depict such a retaining wall. The applicant states that it is a note on the drawing. He states that this has come up in discussion regarding the site plan approval and it was acceptable to everyone.

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

The Planning Board recommends approval of the aforementioned variance because the existing property is large enough to accommodate the structure without interfering with existing LDD and setback requirements. Many properties in this area have also received similar variance requests. The additional SF will have no effect on the view shed of the home or the property.

Mr. Arcarese asked for questions or comments from CED. Mr. Beck states that DPW had no questions or comments on this application.

Mr. Beck states that CED issued comments as follows:

The applicant obtained site plan approval on Sept. 18th. The CED does not have issues with this application. A building permit should be issued within one year.

Mr. Beck states that this is the first he has heard of any issue with a retaining wall. If there is to be a retaining wall, he feels that detail on the retaining wall should be submitted to the DPW for their review and approval prior to the applicant obtaining a building permit for the garage.

Mr. Arcarese asked for questions or comments from Attorney Place. Mr. Place states that if this is approved it should be a condition that the applicant construct as per elevations submitted.

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

Mr. Moose made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-14 R (2), to allow a proposed garage addition (28.5' x 28.83') 821.6 sq. ft. to the existing 400 sq. ft. garage; the total garage to be 1221.6 sq. ft. instead of 600 sq. ft, subject to the following conditions:

1. Applicant to obtain a building permit within one year from today. 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 construct as per elevations submitted.
3. If there is to be a retaining wall, detail on the retaining wall should be submitted to the DPW for their review and approval prior to the applicant obtaining a building permit for the garage.
4. Applicant may have outside storage behind the garage.

There is no other way to obtain the benefit being sought. This will create an undesirable change to the character of the property or neighborhood. This is set back very far from the road. There will not be any adverse physical or environmental hazards creating by granting this variance, as the DPW will review any proposed retaining wall. The applicant needs the additional storage space.

Ms. Barrett seconds the motion.

Motion carries 5 – 0.

4. James Diem/Alliance Group of Western NY, LLC, owner of property located at 1341 Fairport Road, requesting a variance of the Town of Perinton Sign Code Section 174-9 D(4), to allow proposed new sign (30 sq. ft.). Said sign to be 6.5 feet in height instead of 5 feet in height. Said property being located in a Commercial District.

Kathy Mincin presented the application on behalf of Mr. Diem, who was unable to attend. The Planning Board approved the sign application on 9-18-13. The reason for the height is the flower bed base around it and they wanted to match the stone on the building that they will be installing.

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

The Planning Board recommends approval of the aforementioned variance because the actual replacement sign itself is within the code. This request will allow the new 5'0" tall sign to be placed on an architectural stone planter base that is 1'-6" tall. This base is very attractive and works well with the approved overall replacement sign request.

All of the Board members like the sign and have no questions.

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

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

This sign will replace an existing sign which is located within a Town sanitary sewer easement. This office previously agreed to the sign being placed here based upon the requirement that the sign posts not be constructed on a footer. It appears that the sign being proposed is to be anchored similar to the existing sign. We request that the applicant be required to sign an Easement Encroachment Agreement prior to obtaining a Building Permit if the application is approved.

Mr. Beck states that CED issued comments as follows:

This is a replacement of an existing sign, which received a variance in Dec. 2002 to set 10 feet back from the property line instead of 25 feet. The applicant received sign approval for the proposed sign on Sept. 18th. The CED does not have issues with this application. A sign permit should be issued within six months.

Mr. Arcarese asked for questions or comments from Attorney Place. Mr. Place states that this will look nice as an improvement along the Fairport Road corridor.

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

Ms. Ezell made a motion to grant a variance of the Town of Perinton Sign Code Section 174-9 D(4), to allow proposed new sign (30 sq. ft.). Said sign to be 6.5 feet in height instead of 5 feet in height, subject to the following conditions:

1. This sign will replace an existing sign which is located within a Town sanitary sewer easement.
2. Sign posts are not to be constructed on a footer. It appears that the sign being proposed is to be anchored similar to the existing sign.
3. Applicant is required to sign an Easement Encroachment Agreement with the DPW prior to obtaining a Sign Permit from CED.
4. A sign permit to be obtained within 6 months from today. 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 will be an improvement to what exists today. The Planning Board supports this request. This proposal will mirror the height of the signage for the commercial property next to it. There is no other way to obtain the benefit being sought. This will not create any undesirable change to the character of the neighborhood. This will visually enhance the property and the neighborhood. This is not a substantial request, and is in keeping with other commercial property in the immediate area. There will not be any adverse physical or environmental effects caused by granting this variance. It is self-created, but does not outweigh the benefit to the applicant to have his business be more visible.

Mr. Arcarese seconds the motion.

Motion carries 5 - 0

5. Stephen & Melanie Carozza, owners of property located at 22 Beauclaire Lane, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 (G), to allow a second accessory building (pool house) on the property instead of one accessory building on the property, and further to allow said building to be 836 sq. ft. instead of 200 sq. ft.

Said property being located in a Residential 1-2-5 District.

Mr. & Mrs. Carozza presented the application to the Board. With them is their architect Patrick Morabito. They wish to construct a pool house near their existing in-ground pool. They intend to use the pool house to enclose the existing pool equipment and to have a small changing area and a small storage area to store towels and pool items. They will never use it as a second residence or lease the space or ever reside in it. They received the comments from the DPW and have no concern with their comments. During construction they will haul the dirt off site. Her husband has trucks from his business that they can use for this purpose. The structure will be consistent with the existing home as far as matching the siding, stonework and brick. They have discussed this with their neighbors, the Goodrich family, and they have been unable to speak with LeParre family, as she travels a lot. It is not visible from the neighboring properties.

Mr. Arcarese states that the lot is large and can support this request.

Mr. Moose inquired what the lot size is. The applicant states she does not know. Mr. Moose states that the plans are nice and is well screened.

The remaining Board members feel that the lot is well screened and this will look very nice.

Mr. Arcarese asked for questions or comments from the Conservation Board. Ms. Fredette asks if the mechanicals for the pool will be stored inside. The applicant states yes.

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

We request that the plans show silt fence to be installed down slope of the construction area and that the applicant state what is to happen with any excavated earth.

Mr. Beck states that CED issued comments as follows:

The CED does not have an issue with the variance request. A building permit should be issued within one year.

Mr. Beck states that any dirt/mud in road as it is trucked off site will need to be cleaned up by the applicant.

Mr. Arcarese asked for questions or comments from Attorney Place. Mr. Place states that the elevations are nice. He asks the applicant if they plan to construct as per the elevations submitted, and the applicant states yes.

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

Mr. Arcarese made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-14 (G), to allow a second accessory building (pool house) on the property instead of one accessory building on the property, and further to allow said building to be 836 sq. ft. instead of 200 sq. ft, subject to the following conditions:

1. Silt fence to be installed down slope of the construction area.
2. A building permit to be issued within one year from today. 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.
3. Applicant to construct as per elevations submitted.
4. Excavated earth that is trucked off site – any dirt/mud created in the road from this is to be cleaned up by the applicant.

There is no other way to obtain the benefit being sought. The applicant has a large enough yard to accommodate this request. There will not be any undesirable change to the character of the neighborhood. This will not be visible to the neighbors; there is a lot of screening. It is a substantial request, but is mitigated by the lot being large enough and the lot being so well screened. There will not be any adverse physical or environmental effects caused by granting this variance. It is self-created, but the pool house will enhance the property and will also store mechanicals inside.

Mr. Moose seconds the motion.

Motion carries 5 – 0.

6. Elmer Dustman, owner of property located at 26 Peachtree Lane, requesting a variance of the Town of Perinton Zoning Ordinance Section 204-14 C(3), to allow an 8 foot fence (deer fence) in the rear yard instead of a 6 foot fence.

Said property being located in a Residential B District.

Mr. Dustman states that he has resided at this property since 1966 and has a garden that has been building over 47 years. The property is about 1.5 acres. Plantings include 29 Japanese Maples, some are approaching 5" caliper and replacement value would be upwards of \$2,000. There are 14 rare ornamental trees, 70 hastas, 63 conifers, 200 perennials, 6 apple trees and a vegetable garden. He is seeking to raise his existing fencing to 8' in an effort to keep the deer out. The fence is approximately 600' in length.

Mr. Arcarese states that the deer are very aggressive and will go right up the driveway. He is not sure that the applicant will obtain the desired result. Mr. Dustman states that he recently replaced a deteriorated fence to 5' in height and used deer spray. He has toured other gardens that have success with 8' fencing, but those gardens had all four sides. He states that this property will not have 4 sides, as there is some protection by the adjacent neighbor who has an aggressive dog.

Mr. Moose asks if any of the neighbors have offered any comment to him. The applicant states no.

Mr. Place inquires if any of the neighbors will be able to see the proposed fence. Mr. Dustman states that the fence has been there since 1970 and they have always seen it. Mr. Place inquires what the height is of the existing fence. Mr. Place states that it is hard from the pictures to see what it looks like. The applicant states it is netting. There were a number of Board members who felt that it was a solid fence he was proposing. Mr. Beck showed the Board a sample of the netting that the applicant submitted as part of the application. The applicant explained that he plans to attach the netting addition to the existing fencing to bring all of the fencing up to a height of 8'.

Ms. Ezell states that the existing fencing is of various heights. She inquires if he plans to remove all of the existing fencing and replace it with 8' of this netting. The applicant states no. He plans to add 4' of netting to the existing 4' fence, and 3' of netting to the existing 5' of fencing. Ms. Ezell inquires if the existing fencing is all the same kind of fencing. The applicant states that all of the existing fencing has wooden posts, some with 5' steel fencing and some with 4' fencing. Ms. Ezell feels that there are a lot of different composites of fencing. Ms. Ezell states that she would prefer to have 8' of one thing; not a variety of metal, mesh, wood posts, steel posts, etc. Ms. Ezell states that she is not sure how effective this will be if it is not completely enclosing the property.

Mr. Arcarese inquires if adding meshing to an existing fence is considered a fence. Mr. Beck states that it is considered a fence. The total height is the issue.

Ms. Barrett inquires how it will be attached to the existing fence. The applicant states that he will have to add posts to go up higher to 8' and attach the netting. Ms. Barrett states that there are three components to his proposal; there is existing fencing of a variety of heights, some sort of post to add onto the existing fencing to be able to add the new material (netting) to bring the height to 8'. Ms. Barrett inquires what the posts will be made out of. The applicant states some sort of metal post. Ms. Barrett inquires how many years has the applicant had this garden. The applicant states since 1966. She states that based on the number of items he states that he has in his garden, it would seem that he has been very successful. She is not sure that he needs this fence. The applicant states that the number of deer has increased.

Mr. Place inquires what color the netting will be. The applicant states black. Mr. Arcarese inquires what color the posts will be and the applicant states dark green.

Ms. Sartori inquires if the applicant thinks this will really work. The applicant states that people who have total mesh fencing from grade to 8' high, they have had success.

Joyce Dustman states that the only people who see this fence is the neighbor next door, who only sees it is when he mows the lawn on the other side. It is not ugly.

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

Mr. Arcarese asked for questions or comments from the Conservation Board. Ms. Fredette states that the garden is beautiful and she understands the need to try to prevent further deer damage.

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

The applicant has an existing fence along his property lines that he intends to raise the height to 8 feet. A portion of the fence is within existing Town easements. We request that the applicant be required to sign an Easement Encroachment agreement prior to receiving a Building Permit

Mr. Beck states that CED issued comments as follows:

1. **The proposed fence is located within a storm sewer easement and would require DPW approval.**
2. **The request appears excessive. The proposed fence does not appear to be constructed of a durable all-season material, which makes it look temporary in nature. It could create a negative visual impact for the neighbors.**
3. **The CED does not support the variance request.**

Mr. Beck states that a neighbor submitted comments, which are a part of the record, as shown below:

Zoning Board of Appeals
Town of Perinton
1350 Turk Hill Road
Fairport, NY 14450-8796



September 15, 2013

Dear Zoning Board of Appeals:

I am the owner of 25 Peachtree Lane. I was recently notified that my neighbor, Elmer Dustman, is applying for a variance of Town Code to extend his backyard fence another several feet above the height that it already stands, to a total height of 8 feet. An 8-foot fence in the backyard is a violation of the Town of Perinton Code Section 208-14 (C)(3). Allowing a variance from this Code will result in an unsightly fence adjacent to my property line. I object to this fence and ask that the Zoning Board of Appeals deny Mr. Dustman's request for a variance.

Sincerely,

Daniel LePage
A concerned community member and neighbor

Mr. Dustman inquired if the Town objects to the fencing because of the composition or is it the height of 8'. Mr. Beck states that the Town does not support the height increase and does not support the proposed construction of a material that is not durable; the total height is a combination of three different materials and he feels that look may have a negative impact to the neighbors. Mr. Dustman states that other municipalities in the United States do have deer ordinances and allow 8' fencing. He feels that Perinton is pretty behind what is happening elsewhere. Mr. Dustman states that it sounds like the Town objects to what the fence is made out of and the total height of it. Mr. Arcarese states that is Code Enforcement's opinion on this. The Zoning Board will make the decision.

Ms. Barrett inquires if Mr. Dustman has explored other options for materials to use. The applicant states that portions of the existing fence can remain where it is as it is within compliance and other portions can be put in at an 8' height of one composition; one metal fence.

Mr. Place inquires if more than one neighbor can see this. The applicant states that other neighbors can see it; only one neighbor is grieving.

Mr. Moose states that he is not convinced that the applicant will be able to keep deer out; with any kind of material to build an 8' fence, if he doesn't enclose the entire yard. He isn't sure this is the right solution. He would like to try to get something that will work to try to help the applicant protect his garden.

Mr. Arcarese agrees with Mr. Moose. The applicant states that whether or not this will work is not the risk of the Board; it is his risk. Mr. Dustman inquires if 8' is the issue or is the composite the issue. Does the Board want to see 8' of one consistent material or do they not support 8' in height at all. Mr. Place states that the Board has to review the benefit obtained by the applicant and weigh it against any detriment to the neighbors.

Ms. Barrett states that as much as she would like to approve this request, as she feels that his garden is fantastic, she is having a difficult time overcoming the burden to grant the variance. She feels that there are other means feasible

to attain the benefit being sought. Mr. Dustman states that he could use one solid material. She does feel that there could be an undesirable change to the neighborhood; the Town has received a letter from a neighbor opposing this fence. The request is substantial; an 8' fence is substantial. Will the request have any adverse physical or environmental effects; she feels that this goes in favor of the applicant. It is self-created. The problem that the applicant is having is because he has a wonderful garden that he created that the deer find attractive. Ms. Barrett feels that the scale is tilted to not support this request as much as she would like to help him out.

Ms. Sartori inquires if Mr. Dustman is willing to have an 8' fence that is all one material. The applicant states portions of it. MS. Sartori inquires what that means. Mr. Dustman states that along the neighbor's line, he could go to an 8' tall fence all of one composition, but he doesn't feel that he should have to do all of it; that should be his decision. He is willing to change about 100', or put in his existing fence from the 1970's with 8' wire mesh.

Ms. Ezell states that the burden is not just on the applicant. If this Board is going to grant a variance, they want to be reasonably sure that what the applicant is asking for, he can achieve, otherwise, why would they grant it? Ms. Ezell states that she would rather see all of the fencing be of one composition; not three or four different materials. She feels that because he has a large open area, she wonders if it will accomplish what he wrote down in his application why his request is proper.

Mr. Moose inquires what the height is of the existing fence in the rear of the property. The applicant states that it varies from 4' to 5'. Mr. Moose asks if it is their experience if the deer are jumping over the 4' and 5' fence in the rear of the property. The applicant states not the 5' one, but the 4' one they can get over. Mr. Moose inquires why not just put a 6' high fence up in the rear yard that is permitted by Code and be done with it. The applicant states that 8' is the ideal height to keep deer out. Mr. Moose states that would make a lot of sense if the entire property was enclosed, but that is not what the applicant is asking for. The applicant states that he uses deer spray on the 4th side.

Mr. Arcarese made a motion to deny a variance of the Town of Perinton Zoning Ordinance Section 204-14 C(3), to allow an 8 foot fence (deer fence) in the rear yard instead of a 6 foot fence.

The Board understands that the applicant has a very nice garden and it has been a part of garden tours, etc, however, it is a very substantial request. The applicant has not proven to the Board that there is no other way to obtain the benefit being sought (to keep deer out) by other means that are feasible. The Board feels that a 6' high fence and deer repellent spray could attain the benefit being sought. According to the applicant, some of the existing fencing is 4', some is 5'. The reason that the Town Code does not permit a fence this high is because of the adverse effects on neighboring property, which should be considered. The difficulty is self created in the sense that he has a wonderful garden and trees that he wants to protect from deer. This is a very substantial request and he feels that there are other ways to obtain the benefit being sought to keep deer out.

Ms. Ezell seconds the motion.

Motion to deny carries 5 – 0

Discussion:

Minutes 8/26/13

Mr. Arcarese made a motion to approve the minutes of 8/26/13 as submitted.

Ms. Ezell seconds the motion.

Motion carries 4 – 0, with one abstention of Mr. Moose, due to absence

There being no further business before the Board, the meeting adjourned at 9:10 PM.

Respectfully Submitted,

Lori L. Stid, Clerk