

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

Zoning Board Members present

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

Absent

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. Young called the meeting to order at 7:30 pm, introduced the Board and staff present, and explained the procedures. He states that application #'s 3 and 4 have been rescheduled to 1/27/14.

Mr. Young states that the Planning Board has no comments on the ZBA agenda items scheduled for 12/23/13.

1. Home Power Systems as agent for Dan Vega, owner of property located at 16 Brook Hollow, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-32 D (3), to allow a generator to set 10.5 feet from the side property line instead of 12 feet. Said property being located in a Residential B District.

Mr. Vega presented his application to the board. The generator needs to sit up high because of flooding.

Mr. Young asked if any of the neighbors have offered any comment. The applicant states that he has spoken with the owner of the house next door and there has not been any objection.

Mr. Moose asks if they will provide some screening. The applicant states that it is on a slope. He will add bricks. He has spoken with Eric Williams at the DPW who told him that stilts would not be required; it could go on bricks - 6 X 6 because of the flood zone.

Ms. Sartori asks how loud it will be when it is on. The applicant states not as loud as a portable one. Mr. Place asks if they could set it to test during the day and not at night, and the applicant states that is fine.

Ms. Ezell asks why it couldn't be closer to the home. Mr. Beck states that State Building Code prohibits it to be any closer than 5'.

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

LDD Map indicates that this property is located in an area that has a "High susceptibility to Flooding and Ponding." There is a significant swale at the right side of the property which runs to a catch basin located in the rear yard.

The application indicates that a platform at the side of the garage will raise the generator which should minimize any concerns regarding the unit by flooding or ponding. CB has no other concerns with this application.

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

This application is located within a mapped Flood Hazard Area and is susceptible to occasional flooding. The applicant is proposing to install the generator on a raised platform which the DPW has determined will elevate the generator above the established flood elevation in this area.

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

This property is located within a FEMA – Flood Hazard Area (100 year storm) – the proposed generator must be elevated. The CED Dept. and the DPW have reviewed this with the property owner. The location and elevated platform must be approved by the CED Dept. and the DPW prior to the issuing of a building permit.

The Town staff has no concerns with the setback variance request, and recommends approval of this application.

A building permit must be issued within six months.

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. Moose made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-32 D (3), to allow a generator to set 10.5 feet from the side property line instead of 12 feet, subject to the following conditions:

1. The location and elevated platform must be approved by CED and the DPW prior to the issuing of a building permit.
2. A building permit must be issued within six 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.
3. Applicant to perform any testing of generator during daytime hours and not evening hours.

This is a minor request. There is no other way to obtain the benefit being sought. This will not create an undesirable change to the character of the neighborhood. There will not be any adverse physical or environmental effects caused by granting the variance. It is self-created, but the need for a generator is high with the flooding in this area, and this is the best location for it because of the LDD.

Mr. Arcarese seconds the motion.

Motion carries 6 – 0.

2. Robert & Barbara Jackson, owners of property located at 30 Columbine Circle, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 C(3), to allow a fence/ portion of a fence to be up to 8 feet in height instead of 6 feet in height. Said property being located in a Residential B District.

Mr. & Mrs. Jackson presented their application to the Board. Their goal is to make their backyard more accessible for their son who is in a wheelchair. They wish to extend the concrete apron that is around the pool, so that their son can participate in family activities in the backyard. Currently he only has access to a small 3 or 4' apron around the pool. On the north half; there is a sloping grade, which creates a hill. As they get closer to the fence, they would be towering over their neighbors due to the slope with the extension of the concrete patio. They hope to be able to create a fence height that is 6' using the apron of the pool as a point of reference. They hope to level their back yard with the point of reference of 6' for the height of the fence is the area around the pool. The fence needs to be replaced that is there right now. They can't do both projects at once. They are hoping to have a completely concreted backyard so their son has access to the entire yard. They submitted pictures into the record of their backyard. The fence on one side is higher because of the grade. They have spoken to their neighbors and they are in support.

Mr. Moose asks if the northern corner needs 8' because of the grade change. The applicant states yes; from the outside it will look higher and from the inside it will look the same. From south to north, the neighbors will see a height difference.

Mr. Young asked how high the fence is now. The applicant states 6'. Mr. Young inquired if the whole fence would be 8', and the applicant states no; it will change with the grade.

Mr. Moose asks why they need 8'. The applicant states that if you are standing on the concrete it would only be about 4' high while on the pool deck.

There was a discussion regarding the grade.

Mr. Arcarese inquired if they would plant arborvitae in that one corner with a 6' fence. Perhaps screening would be a better option. He doesn't think that an 8' fence will be good for the neighbors to have to look at.

Mr. Moose agrees, and feels that fast growing arborvitae would offer more privacy in the end.

Ms. Ezell feels that arborvitae would be better for privacy and would work. There are many properties that would like an 8' fence and if there is another way to offer the same relief.

Ms. Barrett feels that while a fence may afford some privacy, perhaps having arborvitae will make it look more desirable.

The applicant states that arborvitae is hard to grow and can easily die and they have not had good luck with them. Mr. Place states that perhaps some trees would help; it doesn't have to be arborvitae.

The applicant states that they have lived here for over 3 years and have installed a ramp in the front and the back for their son. Their neighbors will be pleased with the way it will look. They are not skilled with plantings and hadn't

considered them before. They have already spoken to a concrete and fencing contractor. They are not sure if 8' is accurate; it could be less, and it wouldn't be more.

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

Mr. Salmon states that the Conservation Board issued comments as follows:

Observing the surrounding neighborhood the applicant obviously has good reason to apply for a height extension. However, a fence in that location with so much visual mass if approved should probably be softened on the exterior with some type of screening of arborvitae or appropriate plantings on a specified interval as conditioned by the ZBA. The CB has no other concerns with this application.

Mr. Salmon asks if any of the existing fence is higher than 6' and the applicant states no. Mr. Salmon states that a letter of support from their neighbors may be helpful. Mr. Salmon inquires if this is a corner lot, and Mr. Beck states no.

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

The applicant is proposing to construct a fence within a Town Storm Sewer Easement which contains a 48" storm sewer main. We request that the applicant be required to sign an Easement Encroachment Agreement that indemnifies the Town of Perinton for any damage to the fence in the event the Town must perform maintenance or repair work on the sewer.

A Partial Release of Easement was filed with the Monroe County Clerk's Office in 1988 (Liber 7456, page 032) to release portions of the easement that are encroached upon by "a corner of the dwelling, the patio and a portion of the in-ground swimming pool". This document also contains a clause releasing the Town of Perinton from liability for damage caused by excavating in the areas being released. We request that a reference to this clause be made a part of the recorded minutes for this application.

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

The existing fence and the existing pool area is partially located within a 20' storm easement. An easement encroachment letter must be signed and approved by DPW for both the existing pool and the fence.

Town staff does not support this application because it may have a negative visual impact to the surrounding neighbors, who are in close proximity. It may set a precedent for similar variance requests. Town staff recommends this application be denied.

Mr. Beck states that a surveyor should look to determine where the sewer easement is and if they are planning to expand the patio they will need to work with the DPW prior to any patio addition.

Mr. Young asked for questions or comments from Attorney Place. Mr. Place suggests that a surveyor review this prior to any patio addition.

Ms. Barrett states that the Board is charged with granting the minimum variance, and the applicant has stated that they are not sure if they even need 8' to accomplish what they want.

Several members of the Board were unsure if an 8' fence would even accomplish what they wanted and feel that a contractor should measure and determine what the maximum height they need for what they are trying to accomplish.

Mr. Moose suggests that they try to obtain more information to determine what their actual need is and then come back to the Board if that is what is needed.

Mr. Young states that they have denied 8' fencing in the past in a residential area as the impact to the immediate neighbors would be negative. The Town Code says 6' in the rear yard is appropriate, and generally that works. Mr. Young encourages the applicant to do a little more homework and asks the applicant if they would be willing to "stop the clock" and then they could come back at some future date in a month or two with a revised plan. Mr. Moose encourages the applicant contact some landscaping companies to determine what they could do in this location to obtain the benefit they are seeking, as well as evaluate the cost.

Mr. Place explains what it means to "stop the clock". Mr. Place states that they could test the ph in the soil to determine if landscaping would be successful.

Mr. Young asks if they are agreeable to this. The applicant states yes.

Mr. Young made a motion to defer decision regarding a variance of the Town of Perinton Zoning Ordinance Section 208-14 C(3), to allow a fence/ portion of a fence to be up to 8 feet in height instead of 6 feet in height, subject to the following conditions:

1. Applicant has "stopped the clock".
2. Applicant to consider discussion this evening regarding proposed fence and what the actual height that they need will be for what they are trying to accomplish. Applicant to consider plantings instead of fencing.

3. If applicant decides to go forward, any submission of additional information is required to be submitted to the Town of Perinton no less than two weeks prior to the date of the public hearing that the applicant wishes to be heard on.

Mr. Moose seconds the motion.

Motion carries 6 - 0

3. Dan & Lynne Hawthorne, owners of property located at 67 Lambeth Lane, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 C (3) to amend the approved variance dated January 28, 2013, to allow a portion of the existing fence to be up to 6 feet instead of 6 feet as previously approved.

4. 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 #721 to be 13.33 feet instead of 85 feet and to allow the side setback to be 15.67 feet instead of 30 feet.
 - b. To allow the front setback for existing building #725 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.

Said property being located in a Commercial District.

Discussion:

Minutes 11/25/13

Ms. Ezell made a motion to approve the minutes of 11/25/13 as amended.

Ms. Sartori seconds the motion.

Motion carries 5 – 0, with one abstention of Mr. Moose, due to absence.

There being no further business before the Board, the meeting adjourned at 8:26 PM.

Respectfully Submitted,

Lori L. Stid, Clerk