

**MINUTES
CITY OF CANANDAIGUA
ZONING BOARD OF APPEALS**

April 20, 2022

PRESENT: Carol Henshaw, Vice Chair Roger Brazill
Susan Haller John Roberts
Julie Harris Ryan Wilmer

ABSENT: Joseph Bader, Chair

ALSO PRESENT: Richard E. Brown, Zoning Officer

CALL TO ORDER:

Vice Chair Henshaw called to order the regular meeting of the Zoning Board of Appeals at 7:00 P.M.

APPROVAL OF MINUTES

Vice Chair Henshaw asked if anyone had any corrections or additions to the Regular Meeting Minutes of February 16, 2022. Ms. Harris moved to approve the minutes as submitted. Ms. Haller seconded the motion, which carried by unanimous voice vote (6-0).

REVIEW OF APPLICATIONS:

ITEM 01 **Application #22-070: 345 Eastern Boulevard, WEGMANS FOOD MARKETS, requesting Area Variances, necessary to display two, 9 square foot accessory ground signs associated with two electric vehicle charging stations. In accordance with the Sign Schedule of the Zoning Ordinance, accessory ground signs are limited to 6 square feet and are also limited to one per driveway or parking area.**

Dean Apostoleris from Kimley-Horn and Christopher Fisher from Cuddy & Feder represented the application. They are proposing to install two, double-sided free charging stations that provide static advertising images that change every eight seconds. There will be no motion and no sound. Advertising will be sold to local businesses or may offer space to advertise community content. There will be no content relating to firearms, politics, cannabis or alcohol.

Vice Chair Henshaw opened the Public Hearing.

David Poteet, of 120 Park Street spoke. He feels the signs would be a safety hazard. The rotating images would be too distracting. He also believes the signs are not appropriate for a property adjacent to the forever-wild Lagoon Park. These free charging stations would be the first of their kind in the city, and he is concerned that approval may set an undesired precedent.

Vice Chair Henshaw asked if there was anyone else from the public wishing to speak.

Michael Wood, of 236 Highland Terrace, came forward. He believes the signs may initially be distracting to drivers, but feels this will eventually subside as people become accustomed to seeing them.

Mr. Fisher explained that the signage on the stations is designed to be “inward facing” for existing customers. He agreed that they are not appropriate for other areas, such as public rights-of-way.

Mr. Brown added that no written comments have been received. Vice Chair Henshaw closed the Public Hearing and the discussion was directed to the board.

Mr. Brazill asked if the images would remain visible when the charging station is not being used. Mr. Apostoleris said yes. Wegmans would like to offer advertising 24 hours/7 days a week. The displays are designed to automatically dim at night.

Mr. Roberts asked if they would consider a different location that would not require relocating any handicap - accessible spaces. Mr. Apostoleris said pedestrian access was considered when choosing the location, along with existing utilities. Wegmans is only required to provide 15 accessible parking spaces, but currently has 28.

Vice Chair Henshaw reminded the Board to keep in mind that this is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Mr. Brazill stated that this area is already well lit, both day and night. Additional light from these signs would be insignificant. Ms. Harris agrees.

Ms. Henshaw noted the great distance to the nearest neighbor.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Ms. Harris acknowledged that advertising panels are part of the business plan. To remove it would eliminate the revenue which allows them to be free-charging.

Mr. Brazill agreed and said the proposed style—a free-charging station—is the only one currently offered. It is this design or nothing at this time.

Regarding question #3: *Show that the requested variance is not substantial.*

Ms. Haller believes it is substantial. Mr. Wilmer agreed.

Ms. Harris and Mr. Roberts disagree.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Mr. Brazill believes the project benefits the environment by promoting the use of electric vehicles. Over time the images will become less of a distraction.

Ms. Haller disagreed. They would be distracting and safety is a concern.

Ms. Henshaw believes the proposed placement of the stations is too close in proximity to the crosswalk and store entrance.

Mr. Wilmer agreed and added that other charging stations in the area are positioned further away from any entrance.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Roberts and Ms. Haller believe the hardship is self-created.

Mr. Brazill finds it is less so than many others, due to the character of the campaign for free-charging stations.

Vice Chair Henshaw asked if there were any other comments or questions.

Mr. Wilmer said he would prefer for the Planning Commission to perform the required Architectural Review of the project before making a decision to approve or deny the application. He said he would welcome their comments and expertise in reviewing signs. Ms. Henshaw agreed.

Vice Chair Henshaw called for a motion.

Mr. Wilmer moved that the board **Table** the application to allow for feedback from the Planning Commission.

Mr. Roberts seconded the motion, which ***carried*** with a roll call vote of (5-1):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	NO
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	YES

ITEM 02 **Application #22-072: 36 Highland Terrace, MICHAEL WOOD, requesting an Area Variance necessary to construct a detached garage within 2 feet of the property line and 3 feet from the house. In accordance §850-28 of the Zoning Ordinance, Accessory Structures shall be set back 5 feet from the property line and 10 feet from the house.**

Mr. Wood was present. He said that he would move the existing, prefabricated structure to comply with the code. The application withdrawn.

ITEM 03 **Application #22-103: 14 Saltonstall Street/256 Center Street, JOHN FRASCA, requesting an Area Variance necessary to readjust the property line such that the setbacks are less than 1 foot. In accordance with Schedule 1 of the Zoning Ordinance, the minimum side yard setback is 8 feet.**

Jeremy Years, land surveyor, represented the application. The applicant’s family owned both properties in the 1940s. Building Permits were not being issued when the commercial building was constructed. It extends 25 feet over the property line. The dividing line between the two properties passes through the eastern, approximately 1/3 portion, of the garage. They are seeking to adjust the property lines around the existing buildings.

There is currently 12 feet between the buildings in places, but less than 5 feet where the corners nearly touch.

The newly proposed property line would be 0.2 feet off the Center Street house to create a 12.6-foot setback for the commercial garage. It is their intent to draft a reciprocal easement to allow access to the steps and door on the side of the house.

Mr. Brown reminded everyone that the application also requires Planning Commission approval to authorize the subdivision.

Vice Chair Henshaw opened the Public Hearing. No one came forward and Mr. Brown noted that no written comments have been received. Vice Chair Henshaw closed the Public Hearing.

Vice Chair Henshaw reminded the Board to keep in mind that this is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Mr. Roberts stated that an easement allowing access to the stairs and side door would be required to avoid creating a detriment to nearby property owners.

Ms. Henshaw noted that there are no physical changes proposed, so there would be no undesirable change.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Ms. Henshaw can see no other option that would not require a variance.

Mr. Wilmer agreed.

Regarding question #3: *Show that the requested variance is not substantial.*

Mr. Wilmer believes it is substantial. The property line would be too close to the house to allow for maintenance, such as painting.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Ms. Haller noted there will be no physical change.

Ms. Henshaw said access to the house would be impacted.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Wilmer acknowledged that the present owner did not create the problem, but is attempting to correct it.

Vice Chair Henshaw asked if there were any other comments or questions.

Mr. Wilmer questioned why the applicant is not planning to split the difference in the distance between the two structures. They are drawing the property line within inches of the house. Mr. Years said that this was the request of the property owner.

Vice Chair Henshaw called for a motion.

Mr. Roberts moved that the board Approve the application as submitted and presented for the following reasons:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #3. The variance is not substantial.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.
- #5. The hardship is not self-created.

Mr. Wilmer seconded the motion, which *carried* with a roll call vote of (5-1):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	NO
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	Absent

ITEM 04 Application #22-108: 121 Park Avenue, ANGELA PERROTTO, requesting an Area Variance necessary to replace a detached garage within 1.3 feet of the property line and within 5 feet of the house. In accordance with §850-28 of the Zoning Ordinance, Accessory Structures shall be set back 5 feet from the property the line and 10 feet from the house.

Angela Perrotto presented the application. She would like to demolish her garage and reconstruct a new garage on the same footprint. The existing garage is close to falling on the neighbor’s property. If she rebuilt the structure to comply with current zoning, she would not be able to get her car into the garage.

Vice Chair Henshaw opened the Public Hearing. No one came forward and Mr. Brown noted that no written comments have been received. Vice Chair Henshaw then closed the Public Hearing.

Vice Chair Henshaw reminded the Board to keep in mind that this is a request for an Area Variance and the board will be weighing the benefit of the variance to the applicant against the detriment of the variance to the neighborhood.

Beginning with question #1: *Show that the granting of the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.*

Ms. Harris believes it will produce a positive change to nearby properties.

Regarding question #2: *Show that the benefit sought by the applicant cannot be achieved by some other feasible method that would not require a variance.*

Mr. Wilmer noted there is only 1.3 feet to the property line. Therefore, any other option would still require a variance.

Regarding question #3: *Show that the requested variance is not substantial.*

Mr. Wilmer does not find it substantial because the applicant is seeking to build in the same exact footprint.

Ms. Henshaw does find it substantial with the current setback requirement of 5 feet.

Regarding question #4: *Show that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.*

Ms. Haller stated that the impact would be positive. The threat of the existing garage falling over would be eliminated.

Regarding question #5: *Show that the alleged hardship is not self-created.*

Mr. Wilmer noted that the garage was built before the applicant purchased the property.

Ms. Henshaw pointed out the need for a new garage is due to the poor condition of the existing garage.

Ms. Haller and Mr. Roberts agreed.

Vice Chair Henshaw asked if there were any other comments or questions. Hearing none, he called for a motion.

Mr. Wilmer moved that the board **Approve** the application as submitted and presented for the following reasons:

- #1. The granting of the variance will not produce an undesirable change in the character of the neighborhood create a detriment to nearby properties.
- #2. The benefit sought by the applicant cannot be achieved by some other feasible means that would not require a variance.
- #4. The proposed variance will not have an adverse impact on the environmental conditions in the neighborhood.
- #5. The hardship is not self-created.

Mr. Brazill seconded the motion, which ***carried*** with a roll call vote of (6-0):

Ryan Wilmer	Voting	YES
John Roberts	Voting	YES
Roger Brazill	Voting	YES
Julie Harris	Voting	YES
Susan Haller	Voting	YES
Carol Henshaw	Voting	YES
Joseph Bader	Voting	Absent

ADJOURNMENT

Mr. Roberts moved to adjourn the meeting at 8:33, seconded by Mr. Wilmer and carried by unanimous voice vote (6-0).

Richard E. Brown, Secretary

Joseph Bader, Chairman