

At a meeting of the Zoning Board of Appeals of the Village of East Aurora, New York, held at the Village Hall, East Aurora, New York on the 8th day of March 2018

PRESENT:

John Spooner, Chairman
Michael Campanella, Vice Chairman
John Pagliaccio
Molly Flynn
Michael Croft
Bruce Mitchell, Alternate

ABSENT:

ALSO PRESENT:

William Kramer, Code Enforcement Officer
Chris Trapp, Greco & Trapp, PLLC
Nancy Burkhardt, Deputy Village Clerk
Douglas Scheid, Scheid Architectural, 42 North
708 Persons/23 Pine St. East Aurora, NY 14052
Paul Strada, NAS Sign Co., T-Mobile
123 Grey Street East Aurora, NY 14052
John & Cathy Cimperman, 42 North
540 Mill Rd. East Aurora, NY 14052

MEMBERS OF THE AUDIENCE:

Dan Rahn, 696 Main St. East Aurora, NY 14052
Marlene & Gerald Slade, Emmanuel Lutheran Church, 43 Pine St. East Aurora, NY 14052
Beverly Vidler, Vidler's, 676-694 Main St. East Aurora, NY 14052
Sean Cunningham, Limelight Music, 706 Main St. East Aurora, NY 14052

Chairman John Spooner opened the meeting at 5:58 PM. Chairman Spooner requested a motion to approve the minutes from January 11, 2018. Member Michael Campanella motioned to approve the minutes, seconded by Member Molly Flynn.

IN THE MATTER OF THE APPLICATION OF

NAS Sign Co. (on behalf of T-Mobile) – 123 Grey Street Section §209-5D: revolving, moving, fluttering, internally lit, internally illuminated, back-lit or flashing signs are prohibited; §209-7B(3): any sign may be illuminated, but only by a steady, non flashing external light, and §209-7G(1)(a) Total sign area is to not be more than 8% of a building face in square footage.

Chairman, John Spooner opened the meeting at 6:00 pm and introduced the (6) members of the Zoning Board of Appeals which constitutes a quorum.

IT APPEARING that all parties entitled to notice pursuant to statute were given due and timely notice of the hearing in this matter as it appears from an affidavit of mailing filed herein and made a part of the record in this matter and that the required notice of hearing was published in

the official newspaper of the Village of East Aurora on March 1st, 2018 as it appears from the affidavit of publication filed herein and made a part of the record in this proceeding; and findings.

Chairman John Spooner requested Code Enforcement Officer, William Kramer, to read the denial letter sent to T.Y. Lin (on behalf of McDonald's):

1. The denial letter from the Code Enforcement Officer dated January 17th, 2018 stating that relief is needed from Village Code Sections §209-5D: revolving, moving, fluttering, internally lit, internally illuminated, back-lit or flashing signs are prohibited; §209-7B(3): any sign may be illuminated, but only by a steady, non flashing external light; §§209-7G(1)(a) Total sign area is to not be more than 8% of a building face in square footage.
2. The letter of appeal from N.A.S Company (on behalf of T-Mobile), was read aloud by CEO Bill Kramer and made a part of the record.

IT APPEARING that this matter was not referred to the Erie County Division of Planning with Erie County giving no recommendation.

Chairman Spooner asked if there were any other communications received on the matter. CEO Bill Kramer responded 'No'.

Chairman Spooner asked Paul Strada from the Rochester branch of T.Y. Lin to present his case to the Zoning Board of Appeals on behalf of T-Mobile.

Mr. Strada explained the signage would be replacing that in which was there previously for the Mighty Taco that was at this location. The new sign for T-Mobile would be similar in scope and size. The store is not in an environmentally sensitive area, the landlord of the building requires for signage, and it would be a detriment to the business to not have this sign. In short, the benefits seen from the addition of this sign would outweigh any of the negative impacts.

Member Croft inquired if this was a new lease for this business? To which Mr. Strada confirmed this is a new lease agreement for T-Mobile. Member Croft went further to express his frustration with a landlord creating a requirement in a lease that expressly violates the Village's Code – a landlord cannot trump the Village's requirements.

Chairman Spooner and Member Flynn stated concerns regarding the size of the sign, and inquired as to its proposed size and location in comparison to those had by the neighboring tenants. Mr. Strada stated the size is relatively small and in comparison to the Dollar Tree sign, and in terms of illumination, it is roughly 60% smaller in sign in comparison with this neighbor. Benderson Development utilizes the street view as the basis for allocating sign location for each tenant, creating better visual appeal. Chairman Spooner asked whether NAS Sign Co. is creating this signage as a custom order, or was it coming from a national directive? Mr. Strada confirmed this directive is from a fleet of signs created on a national level and the local retailer chooses the option which would best suit their needs for their location.

Chairman Spooner asked if there were any other questions for the applicant, as there were none, he requested a motion to close the hearing. Member Pagliaccio moved to close the hearing, seconded by Member Campanella with unanimous approval.

Chairman, Spooner called the meeting back into order at 8:26 PM and read the following findings for T-Mobile at 123 Grey Street.

1. 123 Grey Street is in a C District.
2. T-Mobile is in a plaza setting and is located a significant distance off of Grey Street.
3. All businesses in the Plaza have internally lit channel letter signs. The purpose of these signs is to advertise each business and match the unique plaza setting that was approved by the Village previously.
4. There are two variances requested for this sign. The first request is for an internally lit sign. The second request is for 9.88 square feet variance to the allowable size of the sign.
5. The request for this variance will not change the character of the neighborhood nor is it a self-created hardship.
6. The proposed variance is the minimum variance which will prevent the practical difficulty herein without the violating the spirit and intent of the zoning code.
7. The request for a variance is not substantial.
8. There were 49 notices sent out and there were no responses.
9. This is a Type II action under SEQR.

Member Flynn made a motion to accept the proposed findings and to **GRANT** a variance. The motion was seconded by Member Pagliaccio with unanimous approval.

Member Campanella made a motion to close the hearing, seconded by Member Flynn with unanimous approval.

**IN THE MATTER OF THE APPLICATION OF
John & Cathy Cimperman (42 North Brewery) – 23 Pine Street
§285-30: Required Off Street Parking**

Chairman Spooner called to order the hearing for 42 North Brewery at 6:26 PM.

Chairman John Spooner opened the meeting, introduced (6) members of the Zoning Board of Appeals, which constitutes a quorum.

Code Enforcement Officer, William Kramer, read aloud the following:

1. The denial letter from the Code Enforcement Officer dated January 16, 2018 stating that the off street parking spaces at 23 Pine Street would not be compliant and fails to

meet the requirements as stated in East Aurora Village Code Section 285-30 which requires off street parking. The denial letter is to be made part of the record.

2. The letter of appeal from John Cimperman listing the grounds for the variance request. The appeal letter to be made part of the record.

Chairman Spooner asked if there were any other communications received on the matter. Code Enforcement Officer, William Kramer replied there were letters received from Vidler's 5&10 store and Robert Miller Construction. Both were read aloud and made part of the official record.

Chairman Spooner requested for Mr. and Mrs. Cimperman to present their case before the Board. Mr. Cimperman stated they would like to replace the current four unit apartments located at 708 Persons Alley with four (2) bedroom passive use Air BnB's. Member Croft inquired as to what the anticipated occupancy of these Air BnB units will be – Mr. Cimperman replied 40% - a number generated from downtown Buffalo projections. These units will not have dedicated parking; the owners are hoping to share amongst the available spots around the brewery. Mr. Croft inquired further about the proposed 'meeting room'. What type of use will be in the 'meeting room' and what will its occupancy be? Mr. Cimperman asked for Cathy Cimperman, Director of Operations, to respond to this question. Mrs. Cimperman replied to Member Croft's questions with the following:

"They would like to move what is currently happening in their gaming room, to the proposed meeting room. There is room for roughly 25-30 people in the proposed meeting room. The area will have tables...in their thoughts, they envision it to have beer hall style seating... they want to get away from having parties in the game room, moving the 25-40 people out of the game room, and down below in the meeting room, and then charge the space. This room will not be open unless it's rented out. Part of this is simply making the revenue it takes to make this building work."

Member Croft countered: "To be honest, I'm concerned – there is a game room with an occupancy of roughly 70, the other side, the tasting area has roughly 79, as far as parking – correct Bill?, (CEO Kramer confirmed this number), I went in to the restaurant and counted, and found seating for 110 people on that side... and then the game room had another 48 seats. My point is, there is a code that said this is the parking places that are required, it seems that this plan is not realistic for the space. While the code states five extra spaces are needed for this 'meeting room', however I would be surprised if it were ever five cars alone if this meeting room was occupied".

Chairman Spooner expressed concern that the plans submitted show a meeting room holding 24 people; however what is being stated now before the ZBA is different than what is showing on the plans.

Mr. Cimperman acknowledged there are certain weekends where lack of parking is inevitable: EA Music fest, Reunion weekend, Carolcade, etc. however, there is a parking study that was completed by the GBRNTC showing there is not a parking problem on the east side of the Village. Mr. Cimperman also referenced an agreement made, in writing, with Don Vidler, promising to not host events in the meeting room between the hours of 12noon – 4pm, as this is a particularly high-demand time for parking. The applicant also mentioned offering their front parking spots to Limelite music while 42 North is closed during the day – Mr. Cimperman stated better relationships amongst the business owners in this area will foster a healthier atmosphere for the Village.

Alternate Member Mitchell stated he visited all 586 off-street parking spots listed in the GBRNTC study – of these, 174 are restrictive spots, leaving only 412. Overall, this situation really needs to be worked out, and if it isn't worked out, by allowing for this variance to go forward, the ZBA has allowed for this situation to become worse.

Marlene and Gerald Slade, representatives of the Immanuel Lutheran Church stated for the Zoning Board of Appeals the church is the owners of the main parking lot in question, however, they are currently in an agreement with the Village to lease it out and have it utilized as a municipal lot. Immanuel Lutheran stated their members are having difficulty finding parking, and the amount of clean-up they have to do on a regular basis from what they suspect are remnants of patrons of 42 North is significant. Members of the church are wondering if it is beneficial to maintain the lease going forward as the church does not receive revenue from the lease, just the benefit of the Village maintaining it on their behalf.

Mr. Cimperman stated 42 North is experiencing a hardship due to their business being surrounded by a parking lot; this hinders them from being able to add additional parking as their business grows. It is also difficult as 42 North experiences an unfair burden of parking requirements that are not shared by their neighbors on Main Street as the businesses are zoned differently.

Member Flynn requested further information on the proposed garage doors dividing the meeting room from the beer garden. Mr. Cimperman replied with the following reasons for their choice of this feature: Aesthetically pleasing, and it will allow for shelter in the event of rain for patrons in the beer garden. Member Flynn inquired as this then sounds like it would be less of a rented space, and more fluid movement for patrons between the outdoor beer garden and this 'meeting room'. Mr. Cimperman clarified, stating the garage doors aren't able to easily be opened, and it would then require more staffing and cleaning – Mrs. Cimperman followed with "it's not going to be open all the time. It's just a place for them to come into for their food and their gathering – it separates them from the public area".

Member Mitchell stated the ZBA has received 42 North's profile with their plan, but it appears incomplete, the drawings provided do not show the full scope of the project.

Chairman Spooner asked the members and audience for any further questions or discussion. As there was no further commentary offered, the hearing was closed for deliberations.

Chairman Spooner called the hearing back into session at 7:32 PM. The Chairman stated the Board would like more information. The requested information will be drafted in a letter and sent to the applicants within 24 hours of their hearing's conclusion. (See Appendix A for letter).

The Chairman asked for a motion to close this hearing for 23 Pine Street/ 42 North as 'tabled' at 7:36 PM, motioned by Member Croft, seconded by Member Campanella, unanimous "aye".

Respectfully submitted,

Nancy A. Burkhardt
Deputy Village Clerk

Appendix A:

John Cimperman
42 North Brewing Company
23 Pine Street
East Aurora, New York 14052

March 9, 2018

Mr. Cimperman:

This is the letter from the Zoning Board of Appeals (ZBA) of the Village of East Aurora requesting additional information about your proposed project at 708 Persons Alley. Please provide the following information to the ZBA so we may make a decision about your requested variance at a scheduled ZBA hearing on April 5, 2018.

- 1.) An alternate project plan or plans that may address the occupancy, parking and use of these new proposed premises.
- 2.) What will be the maximum number of patrons in the proposed meeting room?
- 3.) A use plan for the proposed meeting room and how it relates to existing premises.
- 4.) An alternative to the garage doors on the east side of the meeting room.
- 5.) Any additional parking that 42 North could create.
- 6.) Full profile of proposed new buildings at 708 Persons Alley with a land survey.
- 7.) Plot plan of all existing buildings of 42 North, located at 23 Pine Street.

Please return the requested information to the Village of East Aurora offices at 571 Main Street by Monday, March 26, 2018. Please provide 9 copies of the information for the Board, CEO, Secretary and the Attorney.

John P. Spooner
Chairman

C.C.

Christopher Trapp, ESQ.
William Kramer, CEO
Mike Campanella – Vice Chairman
John Pagliaccio - Member
Molly Flynn - Member
Mike Croft - Member
Bruce Mitchell – Alternate Member