

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 5th day of April 2018

PRESENT:

John Spooner, Chairman
John Pagliaccio
Molly Flynn
Michael Croft
Joe Cassidy
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

James B. Gannon, Scheid Architectural,
42 North, 708 Persons/23 Pine St. East Aurora, NY 14052
Ronald VanOstrand & Dawn Raczka
187 Olean St. East Aurora, NY 14052
Tom and Terry Alderson, 7 Limestone Dr. Williamsville NY
653 Main Street – Crawford Agency
Michael and Gina Farrell, 15 Creekview Court
45 Church Street
John & Cathy Cimperman, 540 Mill Rd. East Aurora, NY 14052
42 North, 708 Persons/23 Pine St. East Aurora, NY 14052
Peter Sorgi, Hopkings Sorgi & Romanowski PLLC
42 North, 708 Persons/23 Pine St. 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
Dale McCabe, Attorney, Representative of Emmanuel Lutheran Church
Beverly Vidler, Vidler's, 676-694 Main St. East Aurora, NY 14052
Paul Kielich, 57 Pine St. East Aurora, NY 14052
Ken Stone, 143 The Meadow East Aurora, NY 14052
Gregory David Goggins, 813 Martin Dr. East Aurora, NY 14052
Cliff Deflyer, 690 Main St. East Aurora, NY 14052
Bob Young, 810 E. Fillmore Av. East Aurora, NY 14052

Dave Librock, 206 Sycamore St. East Aurora, NY 14052
Danielle Webb, 712 Main St. East Aurora, NY 14052
Gary Groat, Chamber of Commerce, 652 Main St. East Aurora, NY 14052
Marc Gavin, 117 Pine St. East Aurora, NY 14052
Anita Pfeiffer, 620 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 March 8, 2018. Member Michael Croft motioned to approve the minutes with one change to include more detail in regards to the number of parking spaces clarified by Member Croft on page 4. Motion seconded by Member Pagliaccio, unanimously passed.

**IN THE MATTER OF THE APPLICATION OF
VanOstrand & Dawn Raczka, 187 Olean Street §285-17B(3): Mean Height of Accessory
building not to exceed 15 feet.**

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 29th, 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 asked Code Enforcement Officer, William Kramer to read aloud the following:

1. The denial letter from the Code Enforcement Officer dated March 9, 2017 stating that relief is needed from Village Code Section 285-17B(3) Mean height of accessory building must not exceed 15’.
2. The letter of appeal and specifications from Ron VanOstrand & Dawn Raczka was read aloud by Code Enforcement Officer, William 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. Code Enforcement Officer Bill Kramer replied “No sir”.

Chairman, John Spooner asked Ron VanOstrand to present his case to the Zoning Board of Appeals.

Mr. VanOstrand stated the purpose of the request is to have the proposed garage and upstairs workshop accommodate the needs of his studio space. The area will not be used for habitable

purposes, but to store a truck in the lower portion and have an area above to work. The garage needs to be at least nine feet to accommodate his truck being stored in the garage.

Member Pagliaccio inquired about the topography of Mr. VanOstrand's parcel. Mr. VanOstrand replied there is a slight grade, including a 1.5 foot drop-off. This house is set lower than the proposed garage which will be positioned behind the home.

There being no further testimony, or questions from the members of the Zoning Board of Appeals. Chairman Spooner closed the hearing for deliberations and findings at 6:10 PM.

Chairman, Spooner called the meeting back into order at 6:15 PM to read the following findings for the application at 187 Olean Street:

1. 187 Olean Street is in an R District.
2. The residence was constructed in 1886.
3. The proposed 30' x 30 garage will house the personal vehicles and a personal studio on the second floor.
4. The requested variance is for a 1'3" height variance. The code requires a mean height of an accessory building not to exceed 15'. The request is not substantial.
5. This building will not exceed the average height of accessory buildings in the area.
6. The proposed building will not exceed the height of adjacent structures.
7. There were 21 notices sent out and no responses.
8. The Village code does not allow the proposed accessory structure to be used as habitable space.
9. The requested variance will not change the character of the neighborhood.
10. The proposed variance is the minimum variance which will prevent the practical difficulty herein without violating the spirit and intent of the zoning code.
11. This is a Type II Action under SEQR.

Member Croft made a motion to accept the findings and to **GRANT** a variance. The motion was seconded by Member Pagliaccio, carried with a unanimous vote.

4/5/2018 – Variance “**GRANTED**”

**IN THE MATTER OF THE APPLICATION OF
Tom and Terry Alderson, 653 Main Street (on behalf of Brenda Ricotta)
§209-7B(1) Location. Signage to be on the face of the building fronting on a public street or
public parking area. §209-7B(2) Total signage of business not more than 10% of the total
area of the building face designated as its official address (42 sq. ft.)**

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Chairman John Spooner requested Code Enforcement Officer, William Kramer to read the denial letter sent to the original applicant, Brenda Ricotta:

1. The denial letter from the Code Enforcement Officer dated March 15, 2018 stating that relief is needed from Village Code Section §209-7B(1) Location. Signage to be on the face of the building fronting on a public street or public parking area. §209-7B(2) Total signage of business not more than 10% of the total area of the building face designated as its official address (42 sq. ft.)
2. The letter of appeal from Brenda Ricotta, 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. S Bill Kramer responded 'No'.

Chairman, John Spooner asked the Alderson's to present their case to the Zoning Board of Appeals.

Mr. Alderson replied the variance request is part of a larger project to install an awning to add for greater visibility as it is a narrow building. The addition of the awnings will also enhance the appearance of the building overall.

Member Pagliaccio inquired as to if the signage would be removed from the windows as it will no longer be needed, to which the applicants agreed.

There being no further testimony, or questions from the members of the Zoning Board of Appeals. Chairman Spooner closed the hearing for deliberations and findings at 6:32 PM.

Chairman, Spooner called the meeting back into order at 6:36 PM to read the following findings for the application at 653 Main Street:

1. 653 Main Street is in a C District and was built in 1930.
2. The request for the variance is for a sign to be located on the front (north) wall and the west wall of the building at 653 Main St.
3. There are now 2 businesses located in this building.
4. The proposed sign advertising the business would be 48' sq. ft. and the allowed sign size is not more than 42 sq ft.
5. The requested signage on the west wall will give the business exposure to traffic traveling from the west on Main Street.
6. The current signage in the windows shall be removed.
7. This request for a variance will not change the character of the neighborhood. .
8. This request is not substantial.
9. There were 44 notices sent out with 0 responses.
10. The proposed variance is the minimum variance which will prevent the practical difficulty herein without violating the spirit and intent of the zoning code.
11. 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 a unanimous vote to follow.

4/5/18 – Variance “**GRANTED**”

Chairman asked for a motion to close this hearing, motioned by Member Croft, seconded by Member Cassidy, unanimous “aye”, hearing closed.

IN THE MATTER OF THE APPLICATION OF
Michael Farrell, 45 Church Street
§285-18D(2) Required Minimum Lot width – 120’ minimum. §285-18E(3) Required rear yard – 22.71’ (25% of lot depth). §285-44A Required front yard on East Fillmore – 25’ (as per R District Minimum)

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 29th, 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 the original applicant, Michael Farrell:

1. The denial letter from the Code Enforcement Officer dated March 15, 2018 stating that relief is needed from Village Code Section §285-18D(2) Required Minimum Lot width – 120' minimum. §285-18E(3) Required rear yard – 22.71' (25% of lot depth). §285-44A Required front yard on East Fillmore – 25' (as per R District Minimum).
2. The letter of appeal from Michael Farrell, was read aloud by CEO Bill Kramer and made a part of the record.

Chairman, John Spooner asked Mr. Farrell to present his case to the Zoning Board of Appeals.

Mr. Farrell stated the variance is part of a request to build a duplex on the parcel at 45 Church Street. Each site will be 1500 square feet, and will have its own yard. The only setback that will impact one set of neighbors that live on Church Street. The parking lot behind Mr. Farrell's parcel was paved years back without regard to his property line. Mr. Farrell is working with the owner from Arriba to have the situation rectified by removing the improperly installed parking spots, and installing a privacy fence.

CEO Kramer inquired if the building will be close in line to the building of the neighbor on Fillmore? Mr. Farrell replied that it will be even with the neighbor's building of the 4-unit row house at Fillmore, and that both garages will be facing Fillmore Avenue.

Member Croft inquired as to what was on this parcel before the ensuing fire had destroyed the building. Mr. Farrell replied that it was a four-family unit, and while it is zoned for a multi-family townhouse, he will be keeping it as a duplex.

There being no further testimony, or questions from the members of the Zoning Board of Appeals. Chairman Spooner closed the hearing for deliberations and findings at 6:49 PM.

Chairman, Spooner called the meeting back into order at 6:57 PM to read the following findings for the application at 45 Church Street:

1. 45 Church Street is in a RGN District which was rezoned in 2016 from a C District.
2. The multiple dwelling (4 units) previously located on this lot burned to the ground in 2014.
3. The lot at 45 Church Street is a corner lot on the southwest corner of Church Street and East Fillmore. Therefore, by code there are two front yards associated with this property, Church Street and East Fillmore.

4. Multiple unit dwellings are allowed in the RGN District.
5. The proposed street address for this lot will be changed to Fillmore Ave.
6. The proposed front yard on E. Fillmore is 14.86' but will be in line with or behind the multiple dwelling on the south east corner of Church and East Fillmore. Bringing the front yard into compliance would increase the requested rear yard variance by 10.14'.
7. The request rear yard variance of 2.71' nor the requested lot width variance of 2.90' are substantial.
8. There were 41 notices sent out and 0 responses.
9. The requested variance will not have a negative impact on nor change the character of the neighborhood.
10. This is not a self-created hardship.
11. The proposed variance is the minimum variance which will prevent the practical difficulty herein without violating the spirit and intent of the zoning code.
12. This is a Type II action under SEQR.

Member Cassidy made a motion to accept the proposed findings and to **GRANT** a variance. The motion was seconded by Member Croft with a unanimous vote to follow.

4/5/18 – Variance “**GRANTED**”

Chairman asked for a motion to close this hearing, motioned by Member Croft, seconded by Member Pagliaccio, unanimous “aye”, hearing closed.

**IN THE MATTER OF THE APPLICATION
OF
42 North Brewing Co, John & Cathy Cimperman, 23 Pine St East Aurora, NY 14052**

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 29th, 2018 as it appears from the affidavit of publication filed herein and made a part of the record in this proceeding; and findings.

Chairman Spooner read the responses to the questions posed to the applicant at the end of the last Zoning Board of Appeals meeting on April 12th. Following this, the Chairman had the Code

Enforcement Officer read aloud the letters in support from the public and nearby business owners of the Cimperman's receiving the requested parking variance. Following this, the Chairman requested for the applicant's attorney, Peter Sorgi from HSR Associates to present his applicant's case.

Mr. Sorgi spoke to the changes made to the plan since the last ZBA meeting. Since the last meeting, the Cimperman's have worked with the nearby property owners to have 7 new parking spaces identified in the immediate area. These parking spaces will be comprised of the following areas:

- Four additional spots in front of the beer garden.
- Two additional spots will be carved out from the loading dock area and offered back up to the common pool of parking
- An additional space will be leased from Dan Rahn of Rahn's Jewelers.

These newly identified areas will bring the total parking variance request down from eight spots to only one space. Member Croft posed the question to the applicants as to what will happen if the businesses they are working with to have shared parking (i.e. Badger & Gunner and Rahn's Jewelers) sell their property and these agreements are nullified? Mr. Sorgi responded with pointing out the timing of the parking demand brought forth by his client's business takes place on opposing hours of the nearby businesses.

The following individuals stood to speak against the ZBA granting a parking variance to 42 North.

- Paul Kielich shared his concerns:
 - 42 North was initially proposed to be a low-key tasting facility, the resulting business is tremendously different from this.
 - The quality of life and character of the neighborhood has negatively impacted.
- Dale McCabe: Spoke on behalf of Emmanuel Lutheran, who is in opposition of the proposal. Mr. McCabe identified the many meetings that occur at the church throughout the week. The church's privately held 10 spaces are routinely violated. The accessory uses of the brewery is causing the issues and the fact that 42 North is not limiting the number of the attendees in the meeting room may cause even greater issues for the area.
- Don Viddler: 690 Main, while Viddler's has no objection to the additional room for canning, the manufacturing space, or even the AirBnB; they do take issue with the proposed cannot be in support of the 'meeting room'. The parking study that was completed by GBNRTC was not seen as quite valid. The parking for this area is saturated.
- Cliff DeFlyer, 690 Main Street: Primary concern is the meeting room. Talked to Bill Kramer about the fire codes for that area. The first parking variance for this parcel was granted before Emmanuel Lutheran revoked their 10 spots.

The following individuals stood to speak in favor of the ZBA granting a parking variance to 42 North:

- ‘Mo’, 117 Pine: Believes this is the best use for the building. During the last few decades, the building has had a variety of different uses, and the brewery seems like it will truly ‘stick’. Does not seem to have changed the character of the neighborhood
- Dave Librock, 206 Sycamore Street: There is this momentum and hopes the momentum will continue. Mr. Librock hopes there is a more creative way for all of the groups to work together for parking.
- Bob Young, 42 Pine Street: His property values have actually increased over the years, possibly as a result of the brewery.
- Greg Goggins, 813 Martin: As a 23 year resident he is in favor of the 4 AirBnB units. 42 North is the first place they go when they have individuals come in from out of town, and with these units, it will provide them with another option for out of town guests to stay.
- Tony Rosati, 350 Oakwood : Need to increase the vibrancy of the Village. Appreciates this has been a sensitive topic, but it appears the applicants have done a great job of working with the neighboring businesses.
- Gary Groat, EA Chamber of Commerce: The Chamber receives multiple calls throughout the year where groups are looking for places to meet. There is a demand for the proposed meeting room.
- Danielle Webb, The Dress Shop: Finds 42 North to be fabulous neighbors, no longer needs to clean up the back lot as they have taken over this responsibility. The apartment building that currently stands is ugly, would love the opportunity of having a new building in its place.
- Ken Stone, 143 The Meadow: Owners of 42 North are showing an effort above and beyond what normal business owners. Need to work together. Focus on the specifics of the proposal

The Chairman requested for closing statements to be made by the applicants and their representatives. Mrs. Cimperman did hire new staff to perform a clean-up at the end of the night to make sure debris has been removed from the surrounding area. Additionally, 42 North has agreed to plow the church’s parking lot. The utility pole and guide wire near the building in Persons Alley will be relocated to accommodate the addition of the four new parking spots. The proposed meeting room will be taking away area from beer garden, effectively shrinking its footprint. This meeting room will in no way be an extension of the tasting room.

Member Pagliaccio followed this comment with a request to whether the meeting room will be chargeable rental space. Mrs. Cimperman replied ‘yes’, however they will not be able to accommodate weddings as 42 North will never be able to shut down to the public to meet the needs of a wedding party.

Member Flynn motioned to grant the variance as presented with the eight parking spaces. Conversation as to whether verbiage should be included in the variance referencing ‘the plans as presented’, or ‘granting of the variance with the condition of parking, but containing no conditions for the meeting room’. CEO Kramer stated he would be in favor of having the condition ‘as presented’. Chairman Spooner seconded Member Flynn’s motion and the members of the Zoning Board of Appeals voted as follows for the motion to grant the variance as presented:

John Spooner, Chairman: “Aye”

John Pagliaccio: “Nay”
Molly Flynn: “Aye”
Michael Croft: “Aye”
Joe Cassidy: “Aye”

After an initial denial by the Building Inspector as set forth in the letter from William A. Kramer, CEO, dated January 16, 2018, a petition for an area variance with respect to parking was filed by John Cimperman on behalf of his business, 42 North Brewing Company. While the development proposal was extensive with regard to the addition of manufacturing facilities, a meeting room, and another addition which would include three to four hotel style rooms, the variance sought dealt solely with parking spaces and, more specifically, eight parking spaces.

1. 23 Pine St. is in a CM District and was built in 1860.
2. 708 Persons Alley has been approved for demolition and the property will be combined as part of 23 Pine St.
3. 708 Persons Alley previously has been used as a four family residential unit. The proposed new building for the brewery would have three to four hotel style rooms, a production area, office space, restrooms, and a meeting room with a total square footage of approximately 4450 ft.².
4. Previously, the property was given an area variance for thirty (30) parking spaces in 2015. As part of the original variance, they had twenty eight (28) parking spaces committed for the original development which included twelve (12) parking spaces on site and an additional sixteen (16) parking spaces which were committed from the firm of Badger & Gunner at 24 Pine St. A copy of the original notice from the CEO with respect to the 2015 variance is hereto attached as Exhibit A. A copy of the minutes from the prior proceeding is hereto attached as Exhibit B.
5. Located to the north and west of the building is a municipal parking lot with approximately one hundred (100) parking spaces for use by area businesses and the Immanuel Lutheran Church.
6. Forty nine notices were sent to adjoining landowners. Aside from those individuals who appeared for purposes of the two hearings, additional written comments were provided by some residents with such correspondence being included in the record.
7. A hearing was scheduled on Thursday, March 8, 2018. As a result of additional questions posed by the Board after the presentation by the applicant and after hearing the comments from interested community members, the matter was continued for further proceedings to take place on Thursday, April 5, 2018.
8. A series of questions were presented to the applicant for a response prior to the next hearing. A copy of that correspondence is attached hereto as Exhibit C.
9. In response to that request, the applicant, through counsel, forwarded correspondence with additional documentation on or about March 26, 2018 which was included in the record for the proceedings.

10. A further hearing was held at which the applicant, the applicant's representatives, and interested parties were given an opportunity to express their concerns and opinions with respect to the applicant's request.
11. Upon the conclusion of the public comment period, the Board began their deliberations with regard to the grant of the area variance.
12. The initial standard that must be applied requires the Board to consider the benefit to the applicant weighed against the detriment to the health, safety, and welfare of the neighborhood or community.
13. The Board considered whether there would be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties. In this regard, the effect of the parking as a result of the increased use of the facilities was considered.
14. The applicant modified the original plan to reduce the parking variance sought by an additional two spaces along the Alley, one to two spaces by a loading dock which would be available after the end of the date for production purposes, and one additional space as a result of an agreement with an adjoining landowner. The result of this was the reduction of the variance to three parking spaces.
15. It was the consensus of the Board that the variance was not substantial.
16. The Board recognized that while the character of the neighborhood would not be altered, there was a question which arose with respect to a detrimental effect on the neighboring properties as a result of the likely need for additional parking in the area.
17. The Board discussed at some length whether there were other methods to pursue without the granting of an area variance and concluded that there were no other methods in light of the expansion needs with the exception of limiting the use of the meeting room or eliminating the three garage doors which would lead out into the biergarten.
18. Since parking is already at a premium in the area, there would be no additional adverse effect on the surrounding community.
19. The need was clearly self-created by virtue of the intended use of the property by the applicant.
20. The proposal is a type II classification under SEQRA.
21. A motion was made and seconded to grant the area variance with the condition that the parking plan set forth in the last presentation to the Board would permanently remain in effect. The motion was approved by a four to one vote.
22. The proposed variance is the minimum variance which would prevent the practical difficulty herein without violating the spirit and intent of the zoning code.

Motion accepted with majority approval to accept the proposed findings and to **GRANT** a variance.

The Chairman asked for a motion to close this meeting at 9:28 PM, motioned by Member Cassidy, seconded by Member Pagliaccio, unanimous "aye", Zoning Board of Appeals meeting for April 5th, closed.

Respectfully submitted
Nancy A. Burkhardt
Deputy Village Clerk