

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 13<sup>th</sup> day of September 2018

**PRESENT:**

John Spooner, Chairman  
John Pagliaccio  
Molly Flynn  
Michael Croft

**ABSENT:**

Joe Cassidy  
Bruce Mitchell, Alternate

**ALSO PRESENT:**

William Kramer, Code Enforcement Officer  
Nancy Burkhardt, Deputy Village Clerk  
Barbara Davis, 274 Perry Street  
Ashley Huer-Kney, 2031 Billington Rd. East Aurora/Power Yoga, 123 Grey Street  
Randy Bebout, T.Y. Lin, McDonald's, 17 Ernst Place East Aurora, NY  
James Navagh, 91 Pine St. East Aurora, NY  
Dennis Hover, 97 Pine St. East Aurora, NY  
1 Member of the Public

Chairman John Spooner opened the meeting at 5:59 PM. Chairman Spooner requested a motion to approve the minutes from August 9, 2018. Member John Pagliaccio motioned to approve the minutes as presented, seconded by Member Molly Flynn, and passed with unanimous approval.

Member Michael Croft motioned to close the meeting of the Zoning Board of Appeals at 6:00 PM, seconded by Member Pagliaccio with unanimous approval.

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**IN THE MATTER OF THE APPLICATION OF  
Barbara Davis – 274 Perry Street  
285-17 D(1) required front yard is to be 20% of the lot depth (39.07').**

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Chairman, John Spooner opened the meeting at 6:00 pm and introduced the (4) 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 September 6<sup>th</sup> 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 Barbara Davis to refresh the Board on the topic of consideration:

1. The revised denial letter from the Code Enforcement Officer dated August 8<sup>th</sup>, 2018 stating that relief is needed from Village Code Section 285-17 D(1) required front yard is to be 20% of the lot depth (39.07').
2. The letter of appeal from Barbara Davis 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 applicant Barbara Davis if there is anything she would like to add to her case, to which she responded 'No'.

Member Flynn restated the total variance being requested before the ZBA as a total of 20.27' for the required front yard, applicant Davis confirmed this measurement, along with CEO Kramer.

Chairman Spooner closed the hearing at 6:07 PM for deliberations.

Chairman, Spooner called the meeting back into order at 6:12 PM and read the following findings for Barbara Davis of 274 Perry Street:

1. 274 Perry Street is in an R District.
2. The residence was constructed in 1950. An in-ground pool was added to the rear yard in 2007.
3. The existing residence is currently legal non-conforming with regard to the front yard setback. The existing front yard setback is 28.51'. The required front yard is 39.07'.
4. The proposed structure will be located 18.8' ft. from the right of way which will require a variance of 20.27'.
5. With the in-ground pool in the rear yard there is no other area on this lot at 274 Perry Street to locate an addition to the residence without requiring a variance.
6. There are a large number of homes in the neighborhood that have setbacks similar to that of the requested variance.
7. 48 notices were sent out to the neighbors, with no responses.
8. The request for a variance will not change the character of the neighborhood.
9. The proposed variance is the minimum variance which will prevent the practical difficulty herein without violating the spirit and intent of the zoning code.

10. 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.

Chairman Spooner closed the hearing at 6:14 PM.

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**IN THE MATTER OF THE APPLICATION OF  
Ashley Huer-Kney – 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.**

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Chairman, John Spooner opened the hearing at 6:15 PM for the tabled variance request by Ms. Davis. The initial hearing occurred on July 10<sup>th</sup>, however, the Board had requested for greater information be provided.

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 September 13<sup>th</sup> 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 Ashley Huer-Kney:

1. The denial letter from the Code Enforcement Officer dated August 10<sup>th</sup>, 2018 stating that relief is needed from Village Code 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.
2. The letter of appeal from Ashley Huer-Kney was read aloud by CEO Bill Kramer and made a part of the record.

Chairman John Spooner requested for Ms. Huer-Kney to present her case again to the Zoning Board of Appeals.

Ms. Huer-Kney stated this is for a new business moving into the corner once occupied by the old Radio Shack in Benderson plaza. They have already hung signage; however, they are seeking permission from the Board to turn it on. There are electrical components already in the spot allowing for the sign to be wired in and hooked up. Member Pagliaccio inquired if the applicant felt the sign needed to be internally lit in order to see it better from the road, to which Ms. Huer-Kney replied “yes”. Member Flynn asked CEO Kramer if the sign met all the other zoning requirements set forth by the Village Code, to which CEO Kramer confirmed. Member Pagliaccio asked the applicant what times the sign will be lit? Applicant Huer-Kney replied the sign will be turned on in time for the first class at 5:45 AM, and then will be turned off until the

next class later in the morning. The light will be turned off after the final class of the day concludes at 10 PM.

As the Board had no further questions, Chairman Spooner closed the hearing a 6:20 PM for deliberations.

Chairman, Spooner called the meeting back into order at 6:28 PM and read the following findings for Ashley Huer-Kney of 2031 Billington Rd. for the new Power Yoga location at 123 Grey Street.

- 1.) 123 Grey Street (Power Yoga) is in a C District. The plaza was built in 1960.
- 2.) Power Yoga is in a plaza setting and is located a significant distance off Grey Street.
- 3.) All businesses in the Plaza have internally lit channel letter sign to enhance the visibility of the business to Grey Street.
- 4.) The purpose of these signs is to advertize each business and match the unique plaza setting that was approved by the Village Board previously.
- 5.) The existing internally lit sign was permitted in 2006. The Sign Code changed in 2007 to prohibit internally lit signs.
- 6.) The request for this variance will not change the character of the neighborhood nor is it a self created hardship.
- 7.) The proposed variance is the minimum variance which will prevent the practical difficulty herein without violating the spirit and intent of the zoning code.
- 8.) This request for a variance is not substantial.
- 9.) The requested sign meets all other code requirements.
- 10.) There were 49 notices sent out and there were not responses.
- 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 unanimous approval.

Chairman Spooner closed the hearing at 6:33 PM.

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IN THE MATTER OF THE APPLICATION OF

**Randy Bebout, T.Y Lin (on behalf of McDonald's) – 17 Ernst Place 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**

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Chairman, John Spooner opened the meeting at 6:36 pm and introduced the (4) 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 October 4<sup>th</sup>, 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 August 13<sup>th</sup>, 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.
2. The letter of appeal from T.Y. Lin (on behalf of McDonald's), 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 Randy Bebout from the Rochester branch of T.Y. Lin to present his case to the Zoning Board of Appeals on behalf of McDonald's.

Mr. Bebout reviewed the history of the proposed modifications of this McDonald's location. There was intent to do an exterior and interior remodel of the whole building. As the exterior development plan did not receive favorable reviews during the vetting process, the owner decided to focus instead on the interior renovations and only have some slight changes made to the area outside of the restaurant. These changes have included replacement of the drive-thru signage with newer versions including LED lighting. The owner operator decided she would like to still improve the front look of the building by updating the signage in front of the restaurant. The owner brought T.Y. Lin onboard to put together a presentation proposing for the removal of the current neon-lit 'McDonald's sign to then be replaced brick monument to have an internally lit 'M' towards the top of the bricking. The request was made via development plan before the Village Board and Planning Commission. The Planning Commission moved forward with recommending the development plan for approval with changes to the height of the monument sign to be 8' ft in height rather than 10' ft., and to reference the Village's Commercial Design Guidelines and to have landscaping around the monument be in accordance with this.

The monument sign was devised to replace the initially proposed sign in the prior development plan. The development plan had included a bumped out wall of different material with an 'M' sign. As this plan did not receive the necessary approvals, it was edited out altogether.

Member Croft asked the applicant about the total square footage of the formerly proposed signage, Mr. Bebout replied it was to be '14' sq. ft., the same size that is on the proposed monument sign.'

Thomas Hagner, 542 Fillmore Ave: Complimented the Village for controlling the signs around the area, which has added a tremendous amount to the Village's character. He believes the same amount of visibility can be achieved through an externally lit sign by having a light shown on the 'M'. Additionally, he would like to point out there are two other signs for this McDonald's, one being on Grey Street, and then the other off of the circle, both are internally lit.

As the Board had no further questions, Chairman Spooner closed the hearing at 7:20 PM for deliberations.

Chairman Spooner called the meeting back into order at 7:29 PM to read the following findings for Randy Bebout, T.Y Lin (on behalf of McDonald's):

- 1.) 17 Ernst Place is in a CM District. The McDonald's building was constructed in 1980.
- 2.) There are presently several internally lit signs located at 17 Ernst Place and in the general neighborhood.
- 3.) The purpose of these signs is to advertize and direct customers to the proper venue at this business.
- 4.) McDonald's corporate signage branding requires internally lit signs at all their locations.
- 5.) The sign code changed in 2007 to prohibit internally lit signs.
- 6.) The request for this variance will not change the character of the neighborhood.
- 7.) The illumination of the propose sign will take place on during business hours.
- 8.) The proposed variance is the minimum variance which will prevent the practical difficulty herein without violating the spirit and intent of the zoning code.
- 9.) The approval is in lieu of the previous approved variance for an internally lit wall mounted branding sign.
- 10.) The new sign replaces a previous larger internally lit sign.
- 11.) There were 30 notices sent out and there was 1 response in opposition.
- 12.) This is a Type II Action under SEQR.

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

Chairman Spooner closed the hearing at 7:29 PM.

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**IN THE MATTER OF THE APPLICATION OF  
James & Kim Navagh – 91 Pine Street  
285-17 D(4) required side yard is to be a minimum of 5’.**

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Chairman, John Spooner opened the hearing at 7:30 PM.

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 October 4<sup>th</sup> 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 James & Kim Navagh:

1. The revised denial letter from the Code Enforcement Officer dated August 16<sup>th</sup>, 2018 stating that relief is needed from Village Code Section 285-17 D(4) required side yard is to be a minimum of 5’ ft.
2. The letter of appeal from James Navagh 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’.

The Chairman requested for Mr. Navagh to place his case before the Board. Mr. Navagh stated the lot is already narrow in shape, and the garage is currently located close to the property line. Additionally, there is a pool behind the garage causing for there to be hindrance to other locations in which the proposed garage could be placed on their lot. Member Flynn asked if the proposed garage will be located on the same line it is currently located; it will just be a little bigger in the back. Chairman Spooner clarified the dimensions of the garage/pool along with the location of the pool, and if there was ever a chance of it being relocated. Mr. Navagh confirmed the size of the garage will be 22’ x 30’, and the pool is about 18 feet in diameter, and there is no plan to relocate the pool in the future.

Mr. Navagh’s neighbor, Dennis Hover of 97 Pine Street, spoke in favor of the requested variance along with the proposed garage.

As the Board had no further questions, Chairman Spooner closed the hearing at 7:40 PM for deliberations.

Chairman Spooner called the meeting back into order at 7:47 PM to read the following findings for James and Kim Navagh of 91 Pine Street:

- 1.) 91 Pine Street is in an R District.

- 2.) The residence was constructed in April 1900.
- 3.) The lot at 91 Pine Street is a legal conforming lot.
- 4.) The new construction would be a 22' x 30' garage, replacing a 14.29' x 18.34' garage that is 2.62' off the north property line.
- 5.) The proposed garage would be located no closer to the north property line than the existing garage.
- 6.) The proposed garage would be located in the only place suitable for its intended use without incurring considerable costs and usefulness of the rear yard.
- 7.) There is a pool in the rear yard and moving the garage farther to the south would block the visibility to the pool and create a safety hazard.
- 8.) There were 37 notices sent out to the required neighbors and there was 1 response in favor.
- 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.) The hardship is not self-created.
- 12.) This is a Type II Action under SEQR.

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

The Chairman asked for a motion to close this meeting at 7:51 PM, motioned by Member Croft, seconded by Member Pagliaccio, unanimous "aye", Zoning Board of Appeals meeting for September 13<sup>th</sup>, closed.

Respectfully submitted

Nancy A. Burkhardt  
Deputy Village Clerk