

**TOWN OF WHEATFIELD**  
2800 Church Road  
North Tonawanda, N.Y. 14120-1099

**Office of Zoning Board of Appeals**  
Minutes of Meeting  
March 12, 2018

Chairman Muscatello called the meeting to order at 7:00 pm.

Members present: Richard W. Muscatello, Michael Schaffer, Arthur Gerbec, Arthur Kroening.

Guests: Matthew Klette, Gregory Lange, Barbara Lange, Gary Borobiala, Julia Victor, Jeffrey Dewey, James Scaringi.

**Administrative Actions:**

1. Acknowledged with regrets the resignation of Jerry Canada, as the Secretary and member of this Board, effective March 6, 2018.
  - a. A motion to approve the resignation by R. W. Muscatello, seconded by M. Schaffer. Ayes: Unanimous.
2. Town of Amherst Planning Department requests Lead Agency in the SEQR process for the proposed Zoning Ordinance amendment: "Small Cell & Personal Wireless Services Facilities."
  - a. A motion to concur the request made by R.W. Muscatello, seconded by M. Schaffer. Ayes: Unanimous.
3. Formally approved the ZBA meeting minutes for February 26, 2018.
  - a. A motion to approve the ZBA meeting minutes for February 26, 2018 made by A. Gerbec, seconded by M. Schaffer. Ayes: Unanimous.

**The following hearing(s) Held/Interpretations**

**7:05 pm: James Scaringi (Resumed from Feb 26, 2018)** requests an area variance for Lot #176.06-1-23, located at 3376 Niagara Falls Blvd. to increase the size of the parcel's current sign by 25 square feet. Motion to reopen the public hearing made by R. W. Muscatello, seconded by M. Schaffer. Ayes: Unanimous.

Mr. Scaringi presented drawings of the sign along with dimensions.

**Board Findings:**

1. 30 inch high and 10' wide
2. 110 square feet presently from previous variance
3. Under 22 feet (21'6" height of sign)
4. Objective of planning: Building wants an increase of signage square feet.  
Motion to close the public hearing made by R.W. Muscatello, seconded by A. Kroening. Ayes: Unanimous.

**Findings per New York State Law:**

1. No. Mr. Scaringi would like to split signs but cannot inasmuch current contract with tenants remains in effect.
2. No. The general public will not notice the 30" size increase.
3. Town's Master Plan designates the NF Blvd. as the "business corridor." Attracting purchasers benefits all parties.
4. No.
5. Yes. Promoting business activity in a portion of the business corridor is consistent with the Town's Master Plan.

Motion to approve the request made by A. Kroening seconded by A. Gerbec.

- Yes. A. Kroening
  - Yes. A. Gerbec
  - Abstain. M. Schaffer
  - Yes. R.W. Muscatello
- o Motion approved.

**7:25 pm: Jeffery & Deborah Dewey (Rehearing from Feb 26, 2018)** requests an area variance for Lot #163.18-3-14 located at 7167 Marigold Drive, for the construction of a first floor addition having two points that do not meet the 10' minimum side yard

setback. The ZBA Board indicated that while the hearing was advertised on the Town website and in the Niagara Gazette, notice letters were not mailed to neighbors, hence, Gary and Barbara Lange were not in receipt of written notification of the original scheduled hearing. Motion to reopen the public hearing made by M. Schaffer seconded by R. W. Muscatello. Ayes: Unanimous.

Mr. Dewey outlined the plans for the addition and discussed alternatives considered. Alternatives included pushing the addition back on the same side, and moving it to either the rear or opposite side of the house. Each of these alternatives presented challenges. For example, moving the addition to the rear of the house would create natural light and traffic flow issues for the existing space.

In order to provide 24-hour adult attention, Mr. Dewey indicated that his debilitated mother-in-law will occupy the new space. When asked, Mr. Dewey noted that he had spoken to eight (8) of his neighbors prior to this meeting. Two neighbors attended the meeting in support of his variance, while five (5) other neighbors submitted written concurrences for the Board's consideration. He was aware of some of the Lange's concerns and attempted to resolve them via a memo to the Board.

Board Findings:

1. Damage to trunk of tree and branches was possible, if not protected.
2. Drainage: no change to any drainage.
3. Impact to lawn. Petitioner will install a fence to minimize damage during construction period.
4. Indoor flooring will not meet on the same level which is a potential danger to persons not enjoying robust health.
5. Neighbor living at 3304 Spring Court shared that he is satisfied with Mr. Dewey's proposal. Feels the modification will not take away from his privacy. If the project was pushed back then it would be a concern.
6. 7158 Marigold neighbor, likewise, voiced support for Mr. Dewey's variance.
7. The Lange's at 7165 Marigold verbalized:
  - a. Alleged that Mr. Dewey has other options to build inasmuch as his is the largest lot on Marigold Drive: ideal for rear expansion. New room will have modifications to step up into the house.
  - b. Spacing between houses is compromised.
  - c. Alleges survey is not updated.
  - d. The stakes installed, depicting the new build intrusion and lot line, by Mr. Dewey are not correct.
  - e. Ground space will be less inasmuch of the pie-shaped lot.
  - f. Noise pollution created by the Dewey's emergency generator.
  - g. Concerns for the welfare of the trees and shrubs during construction.
  - h. Concerned about the fire risk with the house side yard being reduced.
8. Construction distances from the addition: 7.5 at one point and 8.2 at the other corner.

Motion to close the public hearing made by M. Schaffer seconded by R. W. Muscatello: Ayes: Unanimous.

Board Additions to the Original Findings:

1. None to add.
2. Neighbor voiced concerns for the obstruction of sight lines.
3. 7.5 and 8.2 at the corners.
4. The Lange's stated drainage accumulations since space between homes will be less and noise pollution from the home emergency generator.
5. The Dewey's are coping with a humanitarian challenge.

Board Motion Conditions:

Motion made to approve Mr. Dewey's area variance with conditions by R.W. Muscatello seconded by M. Schaffer, as follows:

1. Gutters must be tied into drain tile into a six inch line to the front of the road, replacing the existing 4" line.
2. Ground receivers to be installed on the property line if only not to disturb roots of trees, and also if resident Lange would tie into the line they may at their expense.

3. Mr. Dewey will professionally install a fence protecting the tree during construction following NY City Department of DOT guidelines.
4. Construct a traffic control fence during construction. Any damage will be corrected and paid for by Mr. Dewey.
5. No landscape on the west side of the new construction, unless receiving written approval from the Lange's.
6. Mr. Dewey to relocate the emergency generator away from the northwest side area.
7. Degree of slope of property will stay at grade.

**Roll Call Vote:**

- No. A. Kroening
- Yes. A. Gerbec
- Yes. M. Schaffer
- Yes. R. W. Muscatello
  - o Motion Approved.

General Business

Meeting schedule: March 26, 2018 @ 7:00 pm, Building Department Conference Room, Lower Level Town Hall

A motion to adjourn was made by A. Gerbec, seconded by A. Kroening. Ayes: Unanimous.

Respectfully submitted,

Mike Schaffer, Secretary Pro Tem (Edited for content by R. W. Muscatello)  
Zoning Board of Appeals

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