



TOWN OF WHEATFIELD
COUNTY OF NIAGARA
Zoning Board of Appeals
2800 Church Road, North Tonawanda, NY 14120
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Minutes of Meeting
October 22, 2018

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

Roll Call:

Present: Richard W. Muscatello (Chair) Michael Schaffer (Vice Chair)
Matthew F. Klettke Deborah Carr (Secretary/Non Member)
Arthur Kroening
Absent: Arthur Gerbec

Reading & Approval of Previous Meeting Minutes:

Motion to approve minutes of September 24, 2018:

Made by: M. Schaffer Seconded by: A. Kroening

- A. Gerbec - Absent
- A. Kroening – Yes
- M. Klettke – Yes
- R. W. Muscatello – Yes
- M. Schaffer – Yes

Motion approved

Communications: All members have been registered by the Town Clerk for the Niagara County Planning & Zoning Training on Tuesday, October 30, 2018 at Niagara County Community College. Art Kroening notified the board he is unable to attend the training session. However, he has been advised to pursue same education via the internet on-line.

Reports of Committees: Not applicable

Unfinished Business: (Carry over)

Members were advised to digest the contents of "The Use variance" portions of the NYS ZBA manual, inasmuch as we have been advised by NY State planning officials that the "Use" variances must be strictly controlled and minimized with justification. **Action: Members**

New Business: (Carry over)

Discussed the need to amend the Flood Zone variance application and cover page. The amended application will be presented to the Board for approval at the next ZBA meeting. **Action: Deb**

Hearing(s) Held/Interpretations

7:10 pm, Craig Berwaldt requests a special permit for Lot#162.14-1-85, located at 2509 David Dr., for the installation of a 30' tower with antenna for the operation of an amateur radio station.

Board Findings:

1. No neighbors attended to support or deny the request.
2. An existing pole located on the property is there solely to hold up wires that were scrapping roof shingles and causing roof damage. Hence, it is not an antenna per se'.
3. Applicant is a duly licensed ham operator and would like to construct a 30' tower with antenna for an amateur radio station, W2VM, which will increase frequency and range capability.
4. The tower will be located on the property where it will be minimally visible to the neighbors, and is only 6' higher than the peak of the home roof.
5. Tower will be a valuable asset to the community in event of a local, state or international emergency. HAM operations are encouraged by the Federal Communications Commission.

6. Tower maintenance is the express responsibility of the petitioner, and for any damage it may occur to neighboring structures and or facilities.
7. Once installed the pole must be certified by NYS licensed engineer (Art 177-3, para a & b), and evidence presented to the Building Inspector, who is authorized to periodically visit the site for compliance.
8. After decommissioning the tower, petitioner must restore the property to the original contours, seeded and removal of all above ground structures previously used.

Following the petitioner's presentation of intentions, plans, questions and answers:

A motion to close the public hearing was proposed by M. Schaffer, seconded by R.W. Muscatello. Ayes: Unanimous

Motion to approve a 2-year temporary Special Use Permit (E Code 200-76) effective October 23, 2018 expiring October 22, 2020 for the construction of a 30' tower with antenna for operation of an amateur radio station made by M. Schaffer, seconded by M. Klettke.

- A. Kroening - Yes
- A. Gerbec - Absent
- M. Schaffer – Yes
- M. Klettke - Yes
- R. W. Muscatello – Yes

Motion approved

7:40 pm, Alex Stoelting, Das Haus Museum, requests an area variance for Lot #147.15-1-7, located at 2549 Niagara Rd., to construct a fence that extends in the County right of way.

Board Findings:

1. No neighbors attended to support or deny the request. (Eagle Scout counselors attended, mainly to support Alex).
2. Petitioner is pursuing an Eagle Scout project to replicate and replace the original 1800's fence which was torn down because of its serious deterioration. The fence height will be three (3) feet, as requested.

Following the petitioner's presentation of intentions, plans, questions and answers:

Motion to close the public hearing made by M. Schaffer, seconded by A. Kroening. Ayes: Unanimous

Findings per New York State Law Guidelines:

1. No. Petitioner is attempting to restore the heritage of Das Haus Museum: the pride of the Village of Bergholz.
2. No. Original home has always had a fence in the same location.
3. Yes. From 5' to 0'.
4. No. It has been a historical site for a number of years and is the site of community pride. The fence will be break away construction, set in dirt and sand.
5. Yes.

Motion to approve the request as submitted made by M. Schaffer, seconded by A. Kroening.

- A. Kroening - Yes
- A. Gerbec – Absent
- M. Schaffer – Yes
- M. Klettke - Yes
- R. W. Muscatello – Yes

Motion approved

8:10 pm, Eric Barlow requests an area variance for Lot #162.15-2-68, located at 2653 Rishan Terr., to construct an attached garage with a side yard set-back of 3' where 10' is required.

Board Findings:

1. No neighbors attended to support or deny the request.
2. Petitioner wants additional space for polishing and waxing his personal cars.

Following the petitioner's presentation of intentions, plans, questions and answers:

Motion to close the public hearing made by M. Schaffer, seconded by A. Kroening. Ayes: Unanimous

Findings per New York State Law Guidelines:

1. Yes. Petitioner could build an additional one (1) car garage in the rear yard but would be much more costly, losing a good portion of the rear yard. Petitioner alleges previous attempts to buy 3-5 feet from the neighbor. However, the neighbor was and is not interested.
2. Yes. Problematically, should the next door neighbor ever want to do an addition on his/her property, there would only be a 13' separation creating a serious situation for emergency vehicles.
3. Yes. From 10' to 3'. Is unsure if the 3' inclusive of the 6" overhang?
4. Yes. It affects the culture of the neighborhood.
5. Yes.

An alternative motion to approve a 10' garage addition with a 5' side yard setback with a 6" overhang made by R.W. Muscatello, seconded by M. Schaffer.

- A. Kroening - No
- A. Gerbec – Absent
- M. Schaffer – Yes
- M. Klettke - No
- R. W. Muscatello – Yes

Motion denied.

8:40 pm, Borrego Solar for David & Dennis Jakubaszek requests an area variance for Lot #133.00-1-3, located at 2469 Lockport Rd., to construct a 7' fence that exceeds the maximum 6' height requirement.

Board Findings:

1. One resident vocalized his disapproval of the total project, the approval process by both the Planning Board and Town Board: all of which is beyond the purview of the ZBA whose responsibility is confined to determining the height of the fence installation.
2. The applicant is able to erect a 6' fence without a variance. However, the National Electrical Code (NEC) requires a 7' fence. The NEC is a higher empowered agency with authority to create standards superior to our town level rules and regulations.
3. Fence would be 7' high with no barb wire and located over 600' from the right of way.
4. Petitioner submitted landscape plans for fence screening,

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

Findings per New York State Law Guidelines:

1. Yes. Petitioner is guided by the NEC code which mandates a 7' fence. Petitioner's engineer cautioned that building a 1' or 2' berm with a 6' fence is not NEC allowable. Additionally, the berm would result in a significant cost increase and would not be aesthetically pleasing.
2. No. Adjacent neighbor at 2469 Lockport Rd., on the west side, expressed his unhappiness and concerns, alleging that other neighbors feel the same. Factually, the fence is over 600' from the right of way.
3. No. From 6' to 7'. Area is mostly farmland.

4. No. Allegedly neighbors are concerned with the length of the fence, which is outside the scope of this height variance request. The landscaping plans submitted by the applicant to the Town's Planning Board stipulate that initial plantings will be a minimum 7' in height, measured from ground level, along the front and 300' down the east and west sides. This information was shared with the resident.
5. Yes.

Motion to go into Executive Session was disapproved inasmuch as the reasons expressed for such an action fell short of the justification.

A subsequent motion to table the request for more information until November 12, 2018 made by M. Klettke, seconded by A. Kroening. The additional information requested related to assurances that the ZBA abided by the resident notification requirements, and assurances that the petitioner will be required to ensure proper grading, seeding and maintenance of the property, including the installation and continuing maintenance of the trees and shrubs.

- A. Kroening - Yes
- A. Gerbec – Absent
- M. Schaffer – Yes
- M. Klettke - Yes
- R. W. Muscatello – No

Motion approved

Public Hearings: Scheduled for November 12, 2018 - Submittal deadline is October 31, 2019

Frontier Fire Co. requests an area variance for Lot #174.08-1-22.1, located at 2181 River Rd., for the construction of a ground sign with a setback of 10' where 15' is required.

Supporting documentation was distributed to **attending** members, with the expectation that the site will be visited prior to the scheduled meeting. Petitioners are expected to "stake out" their properties to accommodate the purpose of the on-site visit. Absentee(s) may obtain documentation by contacting the ZBA Secretary at the Town Hall, during normal business hours.

Miscellaneous: None at this time.

Next Meeting Schedule: November 12, 2018 @ 7:00pm, sharp, Building Department Conference Room, Lower Level, Town Hall.

A motion to adjourn: made by R.W. Muscatello, seconded by M. Klettke Ayes: Unanimous

Respectfully Submitted,

Deborah Carr
Secretary, Zoning Board of Appeals (edited for content by Chairman)

Distribution: ZBA Distribution Listing

Don MacSwan, Supervisor
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Curt Doktor
Art Gerbec
Mike Schaffer
Deborah Carr

Bridgette Grawe (Assessor)
Matthew Klettke
Walt Garrow (Planning Board)
Art Kroening
Harrington-McDonell (Town Clerk)
Richard W. Muscatello

Randy Retzlaff
Gil Doucet
Larry Helwig
Don Wallace (MIS)
Fire Advisory Board
Record File

Thought: "Life is not about waiting for the storm to pass, it's about learning to dance in the rain" ~ Vivian Greene

Openness report finds there's still work to do

A report released by the Buffalo Niagara Coalition for Open Government found several local municipalities have gotten better at clearly stating their reasons for moving their meetings behind closed doors.

While it is good news to know four local governments received passing grades from the open government advocacy group for their handling of so-called executive sessions, it's clear more work needs to be done in this regard considering the coalition reviewed a total of 17 governments' operations in Niagara and Erie counties.

The highest grade in the report went to the Town of Lockport, where coalition members offered a grade of "A" to town officials for clearly explaining the reasons behind the two executive sessions held in the town last year.

The Lockport Common Council received "kudos" for not holding a single executive session all year long.

Sadly, no other government in Niagara County received a passing grade.

The Lewiston town and village boards both received grades of "F" for their handling of executive sessions in four of seven instances and one of two times this year, respectively, according to the report.

The Niagara County Legislature, Niagara Falls City Council, North Tonawanda Common Council and Wheatfield Town Board did not properly disclose their reasoning for entering into executive session once this year.

It is important to note, however, that the county legislature held only two executive sessions in 2018, while the other three boards only held one apiece.

While it may not seem like much, it says something when public bodies fail to adhere to basic rules whenever they conduct business. When it involves motions to enter into backroom to discuss off-the-record topics, the least they could do is clearly explain their motivation.

Coalition President Paul Wolf notes that, too often, local government officials use only vague terms to explain their decisions to enter into executive sessions despite the law requiring more specifics.

As many reporters who cover public governments will tell you, governmental officials and attorneys use "litigation" or "personnel matters" most often when stating the reason for an executive session.

As Wolf notes, the law requires more detail, arguing that public officials should, for example, explain if a personnel matter involves employee discipline or hiring whenever that reason is given for discussion outside the public record.

"You can't discuss in general details," he said. "You have to discuss the specifics of the case."

Again, most reporters and taxpayers who frequently attend public meetings will tell you that is most often not the case.

The coalition's report found only one-quarter of the reviewed governments had "passing" grades, indicating that they called for executive session more than 70 percent of the time. The coalition found, of the 78 executive sessions held by the reviewed governments this year, 45 — or 58 percent — were handled correctly.

"Forty-two percent of the time the public is being left in the dark as to what is being discussed behind closed doors by motions that do not specifically describe the legal or personnel matters being discussed," the coalition's report noted.

Clearly, there's room for improvement here and that's to say nothing about other questionable practices where executive sessions are concerned, including a board somehow magically deciding to schedule one before it has actually met, and the numerous instances in which entire school boards and other public bodies literally spend hours talking in private while the press and members of the public are left to wonder what's going on.

The law allows for discussion in private under a very strict set of circumstances and public entities, including county legislatures, city councils and school boards, should always adhere to the letter of the law.

It's important to remember that the business being transacted by such entities involves personnel and resources being financed by the taxpaying public.