



TOWN OF WHEATFIELD
COUNTY OF NIAGARA
Zoning Board of Appeals
2800 Church Road, North Tonawanda, NY 14120
Phone: (716) 694-1026 Fax: (716) 694-1800
www.wheatfield.ny.us

Minutes of Meeting
June 10, 2019

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

Roll Call:

Present:	Richard W. Muscatello (Chair)	Michael Schaffer (Vice Chair)
	Art Gerbec	Arthur Kroening
	Matthew F. Klettke	Debbie Carr (Secretary, non-member)

Reading & Approval of Previous Meeting Minutes:

Motion to approve Board minutes of May 13, 2019:

Made by:	M. Schaffer	Seconded by:	A. Gerbec
	<input type="checkbox"/> A. Gerbec - Yes		
	<input type="checkbox"/> A. Kroening – Yes		
	<input type="checkbox"/> R. W. Muscatello – Yes		
	<input type="checkbox"/> M. Schaffer – Yes		
	<input type="checkbox"/> M. Klettke - Yes		

Motion approved

Communications: Town “Planning Board site Plans Processing Results” were previously distributed via the Internet.

Reports of Committees: None

Unfinished Business: None

New Business: None

Hearings(s) Held/Interpretations:

7:05pm, Brian LaPlante, requests an area variance for Lot #149.03-1-11, located at 6724 Townline Road, to construct a pole barn that exceeds the maximum height of 14’.

Board Findings:

1. Applicant intends to build a 30’ x 56’ pole barn with a 40 x 16 x 10 wrap around porch
2. No neighbors attended to support or deny the request. However, the applicant alleges neighbors were contacted and support the variance request.
3. The existing old garage will be torn down.

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

Motion approved

Findings per New York State Law Guidelines:

1. The applicant cooperated with the Zoning Enforcement Officer to comply with the setback zoning requirements. Applicant needs the height variance for symmetry reasons when adding the wrap around porch.
2. No. There are other pole barns in the area approximately the same height. There is a hedge row on the right side of the property.
3. No. Difference is only one (1) foot.
4. No. Actually the proposed addition will enhance the road appeal in the area.
5. Yes

Motion to approve the request made by M. Klettke, seconded by A. Gerbec.

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

Motion approved

7:30 pm, Scheid Architectural, agent on behalf of Andrew Gademsky and Niagara Wheatfield School District, requests a use variance for Lot #147.00-1-41, located at 6700 Schultz Street, for use as a day care center.

Motion to re-open the public hearing made by M. Schaffer, seconded by A. Gerbec.

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

Motion approved

Richard W. Muscatello, ZBA Chairman, shared the following remarks with those attending today’s hearing, since the Zoning Board of Appeals (ZBA) original January 28, 2019 hearing. And secondarily, to the outline the ZBA’s process for conducting User Variance applications:

- 1) Chronologically, the original meeting occurred on January 28, 2019, and was rescheduled at the request of Scheid Architectural, agent on behalf of Andrew Gademsky and Niagara Wheatfield School District, without any action, on three other occasions: Feb 25, March 25, and May 13, 2019, and now June 10, 2019. Copies of the January 28th meeting were available to all attendees.
- 2) Explained that ZBA’s authority is limited to considering only the decision of the Zoning Enforcement officer (ZEO). Hence, any or all comments unrelated to the ZEO’s variance decision will not have an impact on the decision-making process.
- 3) The ZBA must find that each of the four (4) New York State mandated requirements must be met by the applicant.
- 4) Acknowledged receiving receipt of 63 neighborhood petitions and letters advocating for the disapproval of this variance request. The statistical breakdown of the petitions is as follows:
 - a) All opposed granting this variance
 - b) Two letters were personal, all others were form letters, some shared their written personal observations. An announcement was made that this material was available for their review.
 - i) Top three concerns are:
 - (1) Neighborhood culture will vastly change (noise, hours of operation, snowplowing, and traffic)
 - (2) Increase in traffic, vehicle and pedestrian safety
 - (3) Restriction of emergency vehicles on narrow roads.

Doug Scheid, Scheid Architectural, agent on behalf of Andrew Gademsky and the NWSCD, read and explained the contents of their latest submission packet. Mr. Scheid called upon the following persons/officers to offer testimony on behalf of the variance request: School Superintendent, NWSCD School Board President, realtor, day care center manager.

- 1). Presented the following documents:
 - a). 2015 Building Condition Survey
 - b). 2019 – 2020 A Fund Expenditure Budget
 - c). Transportation Information If District-wide Program is Set up at Bergholz
 - d). NWSCD Schultz Day Care Facility (Study dealing with parking and bussing concepts)
 - e). Letters from Parlato Law, Attorney and Edward L. Arcara, CPA PC.

Board Findings:

1. Approximately fifteen (15) resident attendees and one (1) school associated member signed up to address the ZBA and school board team.

2. Another undetermined number of attendees spoke during the open discussion period. Some attendees addressed the teams more than once.
3. The school board team talked about the sale price of the building, putting the school building back on the tax rolls, and doing what is best for the district as opposed to the community. (Shared by NWCSD School Board President).
4. The approximate 15 neighbors actually attended to voice their objections against the request.
5. The objections: major change in the character of the neighborhood, safety of people walking children and their pets, noise, traffic and diminished value of their homes.

Subsequent to lengthy discussion, a motion to close the public hearing was made by M. Schaffer, seconded by A. Gerbec. Ayes: Unanimous

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

Motion approved

Findings per New York State Law Guidelines:

1. Cannot realize a reasonable return:

- a. The applicant failed to provide competent financial information for all permitted uses including those that also require a special permit such as mortuaries; cemeteries; golf courses; buildings for parks, recreation, clubs and fraternal organizations; nursing homes and excavation and mining activities. The information that was provided was not competent or persuasive.
- b. By admission of the NWCSD school board, the school facility can be used for a wide range of purposes as authorized by the New York State Education Department. Uses such as leasing, adult education or pre-school programs or programs that provide second chances to school drop-outs.
 - i. Previous statement by the school board team that New York State Education Department prohibits the leasing of buildings was proven to be inaccurate, so long as the leasing arrangements comply with the State document.
- c. The costs (\$89,399) reflected in the school board’s report for 2019-2020, assumes the building is fully occupied and active. Admittedly, such is not the case; hence the cost would be significantly less.
 - i. By the team’s admission: the partially used building’s budget will be at least 50% less than estimated.
 - ii. Leasing buildings would defer maintenance costs from the school board to the lessee.
- d. The ZBA would have found helpful a property appraisal created by a professional whose sole profession is appraising.

2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood:

- a. Rezoning would result in spot zoning. There is no commercial activity within a reasonable distance to warrant the change. (Congregation Beth El or Rochester v. Crowley)
- b. The applicant must demonstrate that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district for neighborhood. The applicant did not provide adequate proof to demonstrate the hardship to the property in question is unique.

- c. Potential owner articulates the area is underserved with regard to Day Care Services. ZBA findings reveal four (4) existing day care centers in the Town, plus 3-4 pre-school services by the local churches in the vicinity. It is our belief none of the facilities are fully utilized.

3. Requested variance will not alter the essential character of the neighborhood:

- a. The history of the building has been primarily a small neighborhood elementary school from year 1948 until 1990, remodeled between approximately 1991 and 1996 as administrative offices for the school district. The building has been administrative offices and storage for the school district for 20+ years with approximately 10-15 employees driving to and from the office the same time every day with minimal traffic. The school has been dormant for approximately 5 years and is only used as storage for the school district creating little to no traffic for long periods of time.
- b. Neighbors verbalized that they purchased homes near a school knowing they would not have to tolerate commercial activity in their neighborhood, preserving its serene and tranquil milieu.
- c. It is obvious that the resident definition of "Community" is special place to live, to raise a family in simple, serene and tranquil surroundings, e.g., knowing your neighbors, lending a hand when it's needed and coming together to share the niceties and burdens of life.
- d. The proposed variance to conduct business activity is incompatible with the Town's long range Master Plan. Approval of the variance for the neighborhood would create conditions significantly different from those existing in the locality: adding problems incidental to substantial and continuous traffic, noise, drop-off, pick-up and parking situations, vehicle emissions, all contributing to altering the character of the neighborhood.
- e. Daily Day Care accepts clients at 6:15 a.m., and terminates approximately 5:45 p.m. Snow plowing would start around 4:00 a.m., plus warming up of their vehicles, employees arriving approximately 6:00 a.m.
- f. The proprietor estimates their maximum 120 daily client base will generate 70 to 80 cars dropping off and picking up children (twice per day) at all times during the day. This is in addition to employees working odd shifts, and five (5) buses for latch key activity. The parking lot can accommodate 52 vehicles. Many of these spaces will be used by employees all day long.
 - i. Town of Wheatfield memorandum, dated February 12, 2019, to Mr. Scheid, suggested a comprehensive and enforceable, thought out traffic plan. Such was not made available. The plan presented lacked specificity; routes, peak use times, intended use of 20' wide traffic loop, queuing of vehicles & buses, traffic routes on surrounding roads and in the limited parking lot.
- g. There is reasonable expectation that parking and traffic on the Town's narrow roads will greatly impact traffic conditions and public safety. Walking children and pets on the Town's narrow roads is a serious safety and traffic concern.
 - i. There are no sidewalks in the Bergholz village.
 - ii. The winter months (October 1 through April 1) present health and safety issues with snowplowing narrowing the already 24' narrow roads. Speeding is always a concern.
- h. We advised the school board team that the administrative offices are located in the Niagara Falls International Airport's "Airport Potential Impact Zone".
 - i. Town of Wheatfield regulation 200-20.5, Airport Protection Overlay District.
- i. Historically, the Village of Bergholz was settled by German immigrants seeking self-governance, serene surroundings, safety and a healthy environment back to the year of 1836. The Town's

Master Plan for futuristic development does not support this type of business activity. The Master Plan was approved by the Town residents subsequent to Resident and public hearings.

4. Alleged hardship has not been self-created:

- a. A person who enters into an agreement with the owner to purchase property contingent on the grant of a variance is a legitimate person aggrieved. Since the contract vendee has yet to purchase the property, he/she cannot be said to present self-created hardship, but must rely on the circumstances of the owner with whom he/she has a contract.
- b. There was no need to address this criteria in this decision as the applicant failed three (3) of the prior criteria as listed above.

Motion to deny the request, made by A. Gerbec, seconded by A. Kroening.

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

Motion Denied

Miscellaneous: None at this time.

Next Meeting Schedule: July 8, 2019 @ 7:00pm, sharp, Town Hall, Building Dept., lower level conference room.

Public Hearings: Scheduled for July 8, 2019

7:05 pm, Jesse Gooch, requests an area variance for Lot # 162.19-1-30.11, located at 2725 Homeyer Rd.

7:45pm, Chris Trunzo, requests an area variance for lot #162.15-1-26, located at 2734 Stenzel Ave.

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

Respectfully Submitted,

Deborah Carr
Secretary

Distribution: ZBA Distribution Listing

Supervisor
Building Dept.
Planning Board

Assessor
ZBA Members
Town Clerk

Town Board
Don Wallace (MIS)
Record File

Fire Advisory Board