

**ZONING BOARD OF APPEALS
TOWN AND VILLAGE OF ARCADE
17 Church Street, Arcade, New York 14009
Village Office (585) 492-1111
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At a meeting of the Zoning Board of Appeals of the Town and Village of Arcade held on Monday, June 16, 2008 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York:

MEMBERS PRESENT: Jeff Snyder, Gordon Cramer, Paul Sanders and Lee Ameis

MEMBERS ABSENT: Doug Eigenbrod

OTHERS PRESENT: Don and Jennifer Schwab
Danielle Kopinski
ZEO Marvin Zielonka

The Chairman called the meeting to order at 7:00 P.M. followed by introductions of Board Members, the Secretary and the ZEO.

APPROVAL OF MINUTES:

MOTION by Paul Sanders, seconded by Gordon Cramer and unanimously carried, to accept the minutes of the meeting of May 19, 2008.

**INTERPRETATION OF VILLAGE LOCAL ZONING LAW, SECTION 806 –
OPERATION, REQUESTED BY DANIELLE KOPINSKI, FOR PROPERTY
LOCATED AT 282 MAIN STREET:**

The applicant plans to open a restaurant and would like to install a walk-up window for the serving of ice cream.

The applicant stated:

1. Plans are to operate a restaurant serving both food and ice cream with inside seating and a walk-up slider window to serve customers on the side walk who do not wish to enter.
2. The restaurant would be open year round; however the walk-up window would be seasonal.
3. The restaurant would have two service counters located inside. One counter will be for food, the other for ice cream and placed to be accessible from the walk-up window. All preparation would be done within the building.

4. An artist drawing of the outside of the building with the walk-up window was given to the Board.
5. A window presently needs to be replaced in the building and the applicant would like to replace it with the walk-up window at this time.

The Zoning Enforcement Officer stated:

1. Section 806 – Operation states: All primary operations shall be conducted entirely within enclosed buildings.
2. Walk-up windows are not addressed any where within Village Zoning regulations, thus the request for an interpretation.

The Board stated:

1. In the past the bank had a walk-up window and a walk-up ATM. They presently have a drive through window.
2. They do not believe a walk-up window constitutes a primary operation.
3. A Public Hearing will need to be held and neighboring property owners notified of such.

MOTION by Paul Sanders, seconded by Lee Ameis and unanimously carried, to accept as complete the Interpretation Application for Section 806 – Operation, submitted by Danielle Kopinski, for property located at 282 Main Street and further directed the Secretary to forward the application to the Planning Board for comment and recommendation and to publish a Public Hearing to be held on Monday, July 21, 2008 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

PUBLIC HEARING FOR AREA VARIANCE, SBL NO. 161.-1-11.112, SUBMITTED BY DONALD SCHWAB, REQUESTING CONSTRUCTION OF A ONE-STORY, TWO-CAR GARAGE ON PROPERTY LOACTED AT 6641 NORTHWOODS ROAD, NOT IN COMPLIANCE WITH ZONING LOCAL LAW SECTION 404 (8), MINIMUM SIDE YARD DIMENSION OF 35 FEET:

The Board determined this to be a Type II 617.5 C 12, under SEQR.

The Chairman read question number five from application which stated:

“Have you caused the problem that you are requesting to change? No. We did not know you needed 35 feet from the property line for an outbuilding when we built the house.”

The Chairman opened the Public Hearing.

The applicant and his wife stated:

1. They staked out the proposed garage, moving it over to be even with the corner of the house but they did not like the way it looked. They want to build it where it is proposed on the application.
2. They did not know a 35 foot side yard setback was need for out buildings.

3. When they built the house they had not intended to build a garage.
4. The applicant's work truck will not fit in the present garage attached to the house and they also have children who are now driving and need additional space to house their vehicles during the winter.

The Board stated:

1. The applicant has created the problem. They could have built the house more in the center of the property.
2. When the applicant applied for the building permit for the house, they must have been made aware of the required setbacks.
3. The applicant has 20 acres in which to work with for the proposed garage.
4. The Board can not legally approve this variance unless there is a compromise or they could be liable for a court action by the State. The Board must give its reasons for approval and be responsible to the State.
5. The Planning Board also commented that by having 20 acres this is not a hardship.
6. Chairman Snyder stated since the problem was self-created he would ask for a compromise by moving the proposed garage an additional six feet from the property line. This would make the side yard setback 29 feet instead of 23 feet.
7. Board Members Lee Ameis and Paul Sanders stated they could not approve the variance unless that compromise was reached.

The applicant agreed to move the proposed garage 6 feet further from the south property line.

MOTION by Lee Ameis, seconded by Paul Sanders and unanimously carried to approve Area Variance, SBL No. 161.-1-11.112, submitted by Donald Schwab, requesting construction of a one-story, two-car garage on property located at 6641 Northwoods Road, not in compliance with Zoning Local Law Section 404 (8), minimum side yard dimension of 35 feet, with the following condition:

The garage must be moved six feet allowing for a 29 foot side yard set back from the north property line.

Board Members' Reasons

Jeff Snyder voted yes. The applicant is willing to compromise by making the side yard set back 29 feet instead of the 23 feet proposed in the application. It does not quite conform but the esthetics will be maintained. Since the property is wet in some areas it can not be moved further.

Lee Ameis voted yes. The applicant has compromised and agreed to move the garage an additional six feet from the property line.

Paul Sanders voted yes. Although still not happy with the side yard set back, the applicant was willing to compromise.

Gordon Cramer voted yes. The applicant has agreed to the compromise.

ADJOURNMENT:

There being no further business brought before the Board, the meeting adjourned at 8:05 P.M. upon motion by Jeff Snyder, seconded by Lee Ameis and unanimously carried. The next regular meeting of the Zoning Board of Appeals of the Town and Village of Arcade will be held on Monday, July 21, 2008 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

Respectfully,

Holly L. Almeter
Secretary