

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS**  
**April 28, 2015 Meeting**

**Members:**

Wolfgang Buechler, Chairman  
Lee Daigler  
James Schlemmer  
James G. Meholick, Secretary  
Dennis Welka

The ZBA open regular meeting was called to order by Mr. Wolfgang Buechler at 7:00 PM. All ZBA members were present at the meeting. No changes to the ZBA agenda submitted by Wolfgang Buechler were made.

**PUBLIC HEARINGS:**

**Deborah Roill**  
**5764 Fisk Road**  
**Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 10 ft. x 10 ft. (100 sq. ft.) accessory structure with a side yard setback of 7 ft. where the minimum allowed is 15 ft. as per town code, and a 95.5 ft. front yard setback where a minimum of 150 ft. is required as per town code. The side yard variance request would be 8 ft. as per Code Section 247-34.F(2)(b), and the front yard variance request would be 54.5 ft. as per Code Section 247-34.F(2)(a). The size of the property is approximately 0.5 acres and is R-2 medium density residential zoning.

Ms. Roill presented the Town of Pendleton Building Inspectors denial letter, the site survey of the property that illustrated the proposed location of the accessory structure with relationship to the house, and two pictures of the existing accessory structure that was damaged by snow. She indicated that she preferred not to locate the replacement accessory structure further back in the property as there was a septic system & propane tank, and if relocated it would cross their leach field.

Mr. James Blecharski, who lives on 5770 Fisk Road, was present at the meeting to hear Ms. Roill's plans and had no objection with the same location of the shed.

All ZBA members stated that they had driven by or visited the property.

The formal public hearing was closed at approximately 7:10 PM.

**Ned Librock**  
**Tonawanda Creek Road SBL No. 165.00-2-17.1**  
**Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new agricultural building with a side yard setback of 20 ft. where the minimum allowed is 100 ft. as per town code, and a 200 ft. front yard setback where a minimum of 250 ft. is required as per town code. The side yard variance request would be 80 ft. and the front yard variance request would be 50 ft. as per the same Code Section 247-40.A(1). The size of the property is approximately 27 acres and is R-2 medium density residential zoning.

Mr. Librock presented the Town of Pendleton Building Inspectors denial letter, and indicated that this would only be an agricultural building with no animals. Mr. Librock was considering building sizes of 20 ft. x 40 ft. or 24 feet x 48 feet.

All ZBA members stated that they had driven by or visited the property.

A motion was made by Mr. Buechler to table the discussion in order to visit the property to confirm the side yard setback, and was seconded by Mr. Meholick. All voted in favor.

The formal public hearing was tabled at approximately 7:30 PM.

**Craig D'Angelo (Continuation of March 24th Public Hearing)**  
**4217 Beach Ridge Road**  
**Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 50 ft. x 70 ft. (3,500 sq. ft.) accessory structure on a vacant lot before a primary residence is built where the maximum allowed is 2,000 sq. ft. per town code, and with a height of 36 ft. where the maximum allowed is 20 feet. The area variance request would be 1,500 sq. ft. as per Code Section 247-34.E.(3) and the height variance request would be 16 ft. as per Code Section 247-34.F.(3). The size of the property is approximately 58 acres and is R-2 medium density residential zoning.

Mr. Dan D'Angelo was present at the meeting to represent Craig D'Angelo.

Mr. Buechler indicated to the ZBA members that he had discussed with the Planning Board why the code didn't address accessory structures larger than 200 sq. ft. Their response was they expected each request could be looked at individually by the ZBA to determine if it makes sense.

It was also confirmed that Mr. D'Angelo had approval for the pond.

The formal public hearing was closed at approximately 7:42 PM.

**Frederick Howarth  
5329 Tonawanda Creek Road  
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 24 ft. x 40 ft. (960 sq. ft.) accessory structure with a 8 ft. x 28 ft. canopy overhang (224 sq. ft.) for a total area of 1,184 sq. ft. where the maximum allowed is 600 sq. ft. per town code, and a side yard setback at 10 ft. where the minimum allowed is 15 ft. per town code. The area variance request would be 584 sq. ft. as per Code Section 247-34.E.(1). The side yard variance request would be 5 ft. as per Code Section 247-34.F.(2)(b). The size of the property is approximately 0.84 acres and is R-2 medium density residential zoning.

Mr. Howarth presented the Town of Pendleton Building Inspectors denial letter, the site survey of the property that illustrated the proposed location of the accessory structure with relationship to the house, and two pictures of the proposed accessory structure. He indicated that the proposed steel roof building would be used for storage of his boat & tractor, and a new shop. The overhang was needed as he planned on welding & grinding outside the building.

All ZBA members stated that they had driven by or visited the property.

The formal public hearing was closed at approximately 7:55 PM.

**John McCullough(Continuation of March 24<sup>th</sup> Public Hearing)  
5735 Fisk Road  
SBL No. 137.00-2-43.111  
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 24 ft. x 32 ft. (768 sq. ft.) accessory structure on a vacant lot before a primary residence is built, and where the maximum allowed is 600 sq. ft. per town code. The area variance request is 168 sq. ft. as per Code Section 247-34.E.(1). The size of the property is approximately 1.16 acres and is R-2 medium density residential zoning.

No further discussion related to the above variance request was required and the formal public hearing was closed at approximately 8:00 PM.

**Blair Maurer (Continuation of February 24<sup>th</sup> Public Hearing)  
4555 Meyer Road  
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure with a 12 ft. x 40 ft. canopy overhang (480 sq. ft.) for a total area of 1,680 sq. ft. where the maximum allowed is 600 sq. ft. per town code. The area variance request would be 1,080 sq. ft. as per Code Section 247-34.E.(1). The size of the future property to be subdivided is approximately 1.7 acres and is R-2 medium density residential zoning.

Mr. Maurer indicated to the ZBA members that the property sub-division was approved by the planning board, and that he had obtained his building permit for the house. He was not planning for a second floor on the accessory structure and that the height would be less than 20 feet.

The formal public hearing was closed at approximately 8:17 PM.

**REGULAR ZBA MEETING:**

*New Inquiries to ZBA:       None*

***Review Minutes from Prior Meeting:***

A motion was made by Jim Schlemmer to accept the minutes of the March 24, 2015 meeting and was seconded by Dennis Welka. All voted in favor.

***Specific Board Deliberation Actions:***

**Deborah Roill  
5764 Fisk Road  
Pendleton, New York**

The ZBA board reviewed the Area Variance tests, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the side lot variance would not have an undesirable change to the neighborhood.

- b. Are there alternative solutions that would not require a variance?

It was agreed that there was an alternative solution to build the accessory structure further back on the property that was far enough away from the septic system & propane tank in compliance with town code for side yard setback.

- c. Is the requested variance substantial?

It was agreed that the side & front yard variance requests were substantial as the side yard request was greater than 50% of town code & the front yard request was greater than 33% of town code.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

It was agreed that the variance would not have an adverse effect on the physical or environmental conditions in the neighborhood.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

A motion was made by Mr. Schlemmer to grant the side & front yard variances as detailed in the request conditional that the accessory structure has the same 10 ft. x 10 ft. foot print, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Welka. Mr. Buecher & Mr. Schlemmer voted in favor of the motion; and Mr. Meholick, Mr. Welka & Mr. Daigler voted against. The motion was not carried.

A second motion was made by Mr. Schlemmer to grant the front yard variance as detailed in the request conditioned on a one year time limit on completion of the proposed project, and to deny the side yard variance request. The motion was seconded by Mr. Meholick. All voted in favor. The front yard variance request was granted and the side yard variance request was denied.

**Craig D'Angelo**  
**4217 Beach Ridge Road**  
**Pendleton, New York**

The ZBA board reviewed the Area Variance tests, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would not have an undesirable change to the neighborhood as it was far enough away from the other homes in the neighborhood.

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solution would be to build a smaller accessory structure.

- c. Is the requested variance substantial?

It was agreed that the variance requests were not substantial due to the size of the property.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

It was agreed that the variances would not have an adverse effect on the physical or environmental conditions in the neighborhood.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

A motion was made by Mr. Welka to approve the variances as detailed in the request conditional that the accessory structure permit be obtained after or with the primary residence permit. The motion was seconded by Mr. Meholick. All voted in favor.

**Frederick Howarth  
5329 Tonawanda Creek Road  
Pendleton, New York**

A motion was made by Mr. Daigler to approve the variances as detailed in the request, and to impose a one year time limit on completion of the proposed project. No ZBA member seconded the motion.

A motion was then made by Mr. Meholick to cap the area variance at 800 square feet with a maximum height of 16 feet, deny the side yard setback variance request, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Welka. Mr. Meholick, Mr. Welka, Mr. Buechler & Mr. Daigler voted for the motion. Mr. Schlemmer voted against the motion. The area variance with a cap of 800 sq. ft. with a maximum height of 16 ft. was passed, and the side yard setback request was denied.

The ZBA board reviewed the Area Variance tests, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would not have an undesirable change to the neighborhood with a maximum area of 800 square feet.

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solution would be to build a smaller accessory structure.

- c. Is the requested variance substantial?

It was agreed that the variance requests were substantial due to the size of the property.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

It was agreed that the variances would not have an adverse effect on the physical or environmental conditions in the neighborhood.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

**John McCullough** (Continuation of March 24th Public Hearing)  
**5735 Fisk Road**  
**SBL No. 137.00-2-43.111**  
**Pendleton, New York**

The ZBA board reviewed the Area Variance tests, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would not have an undesirable change to the neighborhood.

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solution would be to build a smaller accessory structure.

- c. Is the requested variance substantial?

It was agreed that the variance request was not substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

It was agreed that the variances would not have an adverse effect on the physical or environmental conditions in the neighborhood.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

A motion was made by Mr. Welka to approve the variance as detailed in the request conditional that the accessory structure permit be obtained after or with the primary residence permit. The motion was seconded by Mr. Meholick. All voted in favor.

**Blair Maurer** (Continuation of February 24th Public Hearing)  
**4555 Meyer Road**  
**Pendleton, New York**

A motion was made by Mr. Welka to deny the variance as detailed in the request. No ZBA member seconded the motion.

A motion was then made by Mr. Meholick to cap the area variance at 1,200 square feet, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Buechler. Mr. Meholick, Mr. Schlemmer, Mr. Buechler & Mr. Daigler voted for the motion. Mr. Welka voted against the motion. The area variance with a cap of 1,200 sq. ft. was passed.

The ZBA board reviewed the Area Variance tests, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

ZBA board members Mr. Buechler, Mr. Daigler Mr. Schlemmer & Mr. Meholick felt that the granting of the variance would not have an undesirable change to the neighborhood.

- b. Are there alternative solutions that would not require a variance?

It was agreed that the alternative solution would be to build a smaller accessory structure compliant with the town code.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial as it was twice the size that is allowed by town code.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

It was agreed that the variances would not have an adverse effect on the physical or environmental conditions in the neighborhood as it was consistent with other accessory structures in the area.

- e. Is the applicant’s difficulty self-created?

It was agreed that the applicant’s difficulty was self-created.

***Correspondence:***      *None*

***Special Topics:***      *None*

***Miscellaneous ZBA Topics:***

1. Next ZBA meeting is scheduled for Tuesday, May 26, 2015, at 7:00PM.

A motion was made by Dennis Welka to adjourn the meeting at 9:15 PM, and seconded by Lee Daigler.

Submitted by:

James G. Meholick  
Secretary

**Attachments: Available at the Town Clerk's Office**

Town of Pendleton Zoning Board of Appeals Sign-In Sheet  
Public Hearing Mailing List for Roill, Howarth & Librock  
Town of Pendleton Denial of Building Application for Ms. Deborah Roill  
Town of Pendleton Public Hearing Request for Ms. Deborah Roill  
Town of Pendleton Notice of Public Hearing for Ms. Deborah Roill  
Site Survey of Property for Ms. Deborah Roill  
Picture #1 of Damaged Accessory Structure for Ms. Deborah Roill  
Picture #2 of Damaged Accessory Structure for Ms. Deborah Roill  
Town of Pendleton Denial of Building Application for Mr. Ned Librock  
Town of Pendleton Public Hearing Request for Mr. Ned Librock  
Town of Pendleton Notice of Public Hearing for Mr. Ned Librock  
Site Survey of Property for Mr. Craig D'Angelo  
Town of Pendleton Denial of Building Application for Mr. Frederick Howarth  
Town of Pendleton Public Hearing Request for Mr. Frederick Howarth  
Town of Pendleton Notice of Public Hearing for Mr. Frederick Howarth  
Site Survey of Property for Mr. Frederick Howarth  
Picture #1 of Proposed Accessory Structure for Mr. Frederick Howarth  
Picture #2 of Proposed Accessory Structure for Mr. Frederick Howarth