

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
August 24, 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 7:05 PM. All ZBA members, and The Town Prosecutor, Mr. Ned Perlman, were present at the meeting. No changes to the ZBA agenda submitted by Wolfgang Buechler were made.

PUBLIC HEARINGS:

Vito Palumbo
End of Creekview Drive
SBL No. 166.00-1-10
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to create a single residential lot, after subdivision, with a lot width of 50 ft. where the minimum allowed is 125 ft. per town code. The lot width variance request is 75 ft. as per Code Section 247-10.C.(1). The size of the property is approximately 14.1 acres and is R-1 low density residential zoning.

Mr. Palumbo presented the Town of Pendleton Planning Board Subdivision Denial Letter and the site survey of the property that illustrated the location of three proposed lots on this property. He indicated that he had no future plans to further subdivide the property. All of the new lots would be on septic systems, and that since the ditch was near the entrance to the property the issue of flooding was raised. Mr. Palumbo stated that the ditch could be moved to a new location.

Mr. Palumbo's neighbor, Ms. Sarah McEvoy, who lives on 6873 Creekview Drive and is the second last house on the right, was present at the meeting. She understood from the previous variance approved by the ZBA that only one house would be built on the property and that we should abide by the original agreement.

Mr. Marty Cicatello, who lives on 6870 Creekview Drive and is the last house on the left, was present at the meeting to hear Mr. Palumbo's plans for the property. He was concerned about the flooding of the ditch, and indicated that the previous owner had attempted to subdivide the property but was denied as the property was not on sewers.

Ms. Marge Cavalieri, who lives on 6879 Creekview Drive, was concerned that the rest of the street was not notified. Mr. Buechler explained that homes within 250 ft. of the property are notified by letter and that a public notice is published in the Lockport Sun and Journal.

Ms. Barb Cammarta, who lives on 6876 Creekview Drive, was concerned about the possible future subdivision of the remaining lot as it would create a considerable amount of traffic, and that if this variance was approved Mr. Palumbo would request additional lots be subdivided in the future. She felt that only one house should be built on the property and that we should abide by the original variance agreement.

The formal public hearing was closed at approximately 7:40 PM.

**Joseph Woodward
5520 Oakwood Drive
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new accessory structure at a front yard setback of 127 ft. where the minimum allowed is 150 feet. The accessory structure front yard setback variance request would be 23 ft. as per Code Section 247-34.F.(2)(a). The size of the property is approximately 1.08 acres and is R-2 medium density residential zoning.

Mr. Buechler indicated to the ZBA members that the 600 sq. ft. accessory structure was issued a stop work order by the Building Inspector as it was built at 127 ft. which is within the town code front yard setback of 150 feet. The first inspection required by the Building Inspector was missed, and the building was being professionally constructed.

Mr. Woodward presented the Town of Pendleton Building Inspector's denial, and indicated that there was a tree approximately 25 ft. from the accessory structure & a ditch behind the accessory structure that also provided drainage for the neighbor's properties. Mr. Woodward indicated that the existing shed at the rear of the property would be removed.

Bill & Tammy Anderson, who live on 5495 Oakwood Drive, were present at the meeting and were in favor of granting the variance request. They indicated that Mr. Woodward had improved the house and lot, and would landscape the property which would be an improvement from the previous homeowner.

Ms. Stephane Chase, who lives on 5492 Oakwood Drive, is a 1.5 year resident of the neighborhood and supports the variance request.

Mr. Dan Kalinowski, who lives on 5519 Oakwood Drive, also supports the variance request and felt it would add more value to the nearby properties.

Mr. Carl Badaszewski, who lives on 5492 Oakwood Drive, was okay with the variance request and was pleased that Mr. Woodward was fixing up the property.

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

The formal public hearing was closed at approximately 7:50 PM.

**Timothy Regester
4268 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 front porch with a front yard setback of 33.33 ft. where the minimum allowed is 75 feet. The porch front yard setback variance request would be 41.67 ft. as per Code Section 247-10.D.(1). The size of the property is approximately 0.76 acres and is R-1 low density residential zoning.

Mr. Regester presented the Town of Pendleton Building Inspector's denial, and the site survey of the property that illustrated the proposed location of the porch with relationship to the house. He indicated that the porch would extend 6 ft. from the house with the walkway located along the house and the steps at the driveway.

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

The formal public hearing was closed at approximately 8:00 PM.

**Todd Ostrowski
4567 Mapleton Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct an agricultural building with a side yard setback of 20 ft. where the minimum allowed is 100 feet. The side yard setback variance request would be 80 ft. as per Code Section 247-40.A. The size of the property is approximately 7 acres and is CO-1 Light Commercial zoning for the first 300 ft., and the remainder R-2 medium density residential zoning. The property is in use as a farming operation.

Mr. Ostrowski presented the Town of Pendleton Building Inspector's denial, and an aerial photograph of the property that illustrated the proposed location of the agricultural building with relationship to the street. He indicated that the town code relates to manure & livestock, and that he is leasing the adjacent property that would give him more than 100 ft. from the property line. The 40 ft. x 60 ft. accessory structure would be a staging building for cold storage of fruit, farm equipment, and a tractor. He also stated that there would be no livestock on the property and that he wanted the building on the highest elevation to prevent any potential flooding.

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

The formal public hearing was closed at approximately 8:15 PM.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Dennis Welka to accept the minutes of the July 27, 2015 meeting and was seconded by Wolf Buechler. All voted in favor.

Specific Board Deliberation Actions:

**Vito Palumbo
End of Creekview Drive
SBL No. 166.00-1-10
Pendleton, New York**

A motion was made by Mr. Schlemmer to table deliberation on the variance request so the members could obtain more information on the property, and was seconded by Mr. Buechler. All voted in favor.

**Joseph Woodward
5520 Oakwood Drive
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 front yard variance would not have an undesirable change to the neighborhood. It was felt that the smaller accessory structure at the proposed setback would not dwarf the house.

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

It was agreed that the only alternative would be to move the structure further back in the property.

- c. Is the requested variance substantial?

It was agreed that the requested variance 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 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. Buechler to grant the variance as detailed in the request conditioned on a one month time limit on completion of the building and removal of the existing accessory structure. The motion was seconded by Mr. Meholick. Mr. Buechler, Mr. Meholick, Mr. Daigler & Mr. Schlemmer voted in favor of the motion, and Mr. Welka voted against the motion. The variance request was granted.

Timothy Regester
4268 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 effect on the character of the neighborhood.

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

It was agreed that the alternative solution would be to not build the porch.

- c. Is the requested variance substantial?

It was agreed that the variance request was 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, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Schlemmer. All voted in favor.

Todd Ostrowski
4567 Mapleton 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.

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

It was agreed that the alternative solution would be to move the building to a location that meets town code.

- c. Is the requested variance substantial?

It was agreed that the variance request was 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. Daigler to approve the variance as detailed in the request conditioned that the building would not be used to house farm animals, storage of manure, odor, or dust producing substances per Town Code 247-40.A, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Schlemmer. All voted in favor.

Daniel Gregoretti (Continuation of July 27th Meeting)
4232 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.

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

It was agreed that the alternative solution would be to move the building to a location that meets town code.

- c. Is the requested variance substantial?

It was agreed that the variance request was 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. Buechler to approve the variance as detailed in the request, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Daigler. Mr. Buechler, Mr. Daigler & Mr. Schlemmer voted in favor of the motion, and Mr. Welka & Mr. Meholick voted against the motion. The variance request was granted.

Correspondence:

1. Mr. Libroch submitted a letter dated July 29, 2015, advising the ZBA that he longer needed to pursue his variance request.

Special Topics:

1. Training for the local boards is being offered at Niagara County Community College on Thursday, October 29.

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Tuesday, September 22, 2015, at 7:00PM.

A motion was made by Jim Schlemmer to adjourn the meeting at 9:00 PM, and seconded by Wolf Buechler.

Submitted by:

James G. Meholick
Secretary

Attachments: Available in the Town Clerk's Office
Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List for Palumbo, Woodward, Ostrowski & Regester
Town of Pendleton Subdivision Denial Letter for Mr. Vito Palumbo
Town of Pendleton Notice of Public Hearing for Mr. Vito Palumbo
Site Survey of Property for Mr. Vito Palumbo
Town of Pendleton Denial of Building Application for Mr. Joseph Woodward
Town of Pendleton Public Hearing Request for Mr. Joseph Woodward
Town of Pendleton Notice of Public Hearing for Mr. Joseph Woodward
Town of Pendleton Denial of Building Application for Mr. Timothy Regester
Town of Pendleton Public Hearing Request for Mr. Timothy Regester
Town of Pendleton Notice of Public Hearing for Mr. Timothy Regester
Town of Pendleton Denial of Building Application for Mr. Todd Ostrowski
Town of Pendleton Public Hearing Request for Mr. Todd Ostrowski
Town of Pendleton Notice of Public Hearing for Mr. Todd Ostrowski
Aerial Photograph of Property for Mr. Todd Ostrowski
Letter from Ned Librock
Training Letter from Niagara County Department of Economic Development