

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS**  
**December 22, 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, 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:**

**John Winstel (Representing Property Owner John Bertuzzi)  
Regarding Property on 4097 Beach Ridge Road  
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to continue a non-conforming use in R-1 low density residential zoning. The variance request would be to conduct a non-conforming use as per Code Section 247-10. The size of the property is approximately 1.1 acres and is R-1 low density residential zoning.

John Winstel from the Pyramid Brokerage Company sales office located in the Rand Building in Buffalo was present at the meeting. A pending sale of the above property by an individual who lives out of state is contingent upon the approval of the property being able to conduct a non-conforming use on the property.

The representative indicated to the ZBA members that the property has historically been in non-conforming use within a residential neighborhood for at least two separate businesses – in the past as a hardware store and most recently as a filter purification and filter product retail activity. Owner is looking to sell the property to a new owner who plans to conduct a small packaged product assembly activity in the building. Incoming raw materials include but are not limited to liquid chemicals in 5 gal containers, plastic components of product, and packaging materials. The outgoing product would be skids of completely packaged product.

The owner had contacted the Pendleton Building Inspectors' Office to confirm whether current non-conforming use could continue to the new owners. The Code Enforcement Officer issued a denial based upon ZBA minutes from 1989 which detail the granting of a variance for a 10,000 sq. ft. building addition conditioned on removal of the addition if the business were sold. The 1989 ZBA minutes also refer to a document claiming the land was grandfathered for conduct of commercial business as long as current owner held the property.

The owner, as represented by his realtor, claimed the following:

- a. The business's inventory, equipment, computers, and desks are still in the building.
- b. The 7,854 sq. ft. building is maintained and heated.
- c. The business website still cites this address.
- d. The proposed new business develops an environmentally neutral product that poses no hazards.
- e. Delivery/pickup trucking for the proposed business would be similar to UPS and FedEx deliveries.
- f. Current property easements preclude use of most of the rear portion of the property for any permanent structure.
- g. The new owner will perform cosmetic outside work to make the property look better and deal with rodents, birds and bees.
- h. The building would be used for production work, storage, office space, and lunch room.
- i. Potential employment level would be 12-15 people working out of the building.

Mr. Buechler requested that the owner provide MSDS sheets for all of the chemicals that would be used in the manufacture of the product, estimated quantity of pails & truck traffic per week, and clean up procedures if there was a spill.

Several of the neighbor's close to the property were present and spoke at the public hearing as follows:

- \* Pat McDonald of 4109 Beach Ridge Road
- \* Dave Leible of 4096 Beach Ridge Road
- \* Ed McDonald of 4091 Beach Ridge Road
- \* Dan Hubbard of 4086 Beach Ridge Road

The input as taken from the Public Hearing by the neighbor's is as follows:

1. The neighbor's stated that active trucking to and from the site for the Filtration Products Company has ceased for about 1 year. A specific date was not provided.
2. Prior trucking activity was intrusive on the neighborhood with large semi-tractor trailers idling from the middle of the night till the business opened in the morning. The result was noise and odors to the point where it affected overall quality of life for the neighborhood.
3. They expressed concern that the future owner may be planning a 6 ft. chain linked fence around the entire property with barbed wire topping. It was felt this would not be conducive to the ambience of the neighborhood. The need for a fence also raised questions as to what outside storage plans would cause the need for such security.
4. The neighbor's expressed concern about what chemicals would be used on the property both in fabricating product and in supporting activities, and if they were possibly explosive. They also expressed concern over what runoff may occur from the manufacture/assembly processes.

5. They expressed concern if new activity would include unsightly outside storage units like trailers, wanted to know the hours of operation, and were concerned about what might be coming as there were no guarantees being given by the owner.

Ms. Andrea Klyczek of the Niagara County IDA who has been involved in the pending sale of the property was present at the meeting. She indicated that the owner would not be putting up a barbed wire fence, that there were no fumes or noise at the Toronto facility that she visited, and confirmed that the product is delivered in 5 gallon pails. Her agency is in favor of the business moving into Niagara County & Pendleton.

The ZBA determined that the addition which was the subject of the 1989 variance does not exist on this property. It was either never built or, if built, was removed. The ZBA believes this fact should remove the prior 1989 ZBA action from consideration in this case. The Building Inspectors are unable to locate the original of the "Grandfathering Document" mentioned in the ZBA minutes. No copy was provided by the applicant.

A motion was made by Mr. Meholick to table the public hearing so the action could be sent back to the Building Inspector's Office for re-evaluation, and was seconded by Mr. Welka. All members voted in favor of tabling the public hearing.

The formal public hearing was tabled at approximately 8:16 PM.

**Salvatore Cantanese**  
**SBL No. 150.01-1-19.1**  
**Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new self-storage facility that would contain several small storage units where the use is not permitted by right. The variance request would be to construct the storage facility consisting of many small building as per Code Section 247-12. The size of the property is approximately 5.4 acres and is CO-1 light commercial zoning.

Mr. Mike Marotta of BWR Self Storage was present at the meeting and presented the Town of Pendleton Building Inspector's denial, the site survey of the property that is located just north of Kenyon's, a sketch of the location of the proposed storage units on the property, and photographs of the storage units that he would like to build. He indicated that he had met with the Planning Board and that he was advised that self-storage was medium commercial.

Mr. Marotta also indicated that the single story units would be used strictly for storage and that the facility would be static with no internet sales or rental of trucks at the facility. There would be blacktop road access from Campbell Blvd with a fence, and the access between the rows of storage units would also be blacktopped as opposed to a stone road.

Jane Abt who was present at the meeting was concerned about the rental of trucks at the facility which would result in more traffic in the area.

Jim Sobczyk was opposed to the self-storage units as he felt that professional buildings should only be allowed as per the current zoning. He asked if it met the economic hardship required to grant the variance.

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

A motion was made by Mr. Meholick to table the public hearing so the ZBA could gather more information in order to make an interpretation whether storage meets CO-1 light commercial zoning, and was seconded by Mr. Welka. All members voted in favor of tabling the public hearing.

The formal public hearing was tabled at approximately 8:40 PM.

**REGULAR ZBA MEETING:**

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

A motion was made by Lee Daigler to accept the minutes of the November 24, 2015 meeting and was seconded by Dennis Welka. All voted in favor.

***Specific Board Deliberation Actions:***        *None*

***Correspondence:***        *None*

***Special Topics:***        *None*

***Miscellaneous ZBA Topics:***

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

A motion was made by Jim Schlemmer to adjourn the meeting at 9:17 PM, and seconded by Lee Daigler.

Submitted by:

James G. Meholick  
Secretary

Attachments: Town of Pendleton Zoning Board of Appeals Sign-In Sheet  
Public Hearing Mailing List for Cantanese & Winstel  
Town of Pendleton Denial of Building Application for Mr. John Winstel  
Town of Pendleton Public Hearing Request for Mr. John Winstel  
Town of Pendleton Notice of Public Hearing for Mr. John Winstel  
Letter to Board of Appeals from 1989 for Mr. John Winstel  
E-mail to Joe Kania dated November 2, 2015; for Mr. John Winstel  
Copy of John Winstel of Pyramid Brokerage Company Calling Card  
Town of Pendleton Denial of Building Application for Mr. Salvatore Cantanese  
Town of Pendleton Public Hearing Request for Mr. Salvatore Cantanese  
Town of Pendleton Notice of Public Hearing for Mr. Salvatore Cantanese  
Site Survey of Property for Mr. Salvatore Cantanese  
Sketch of Proposed Units on Property for Mr. Salvatore Cantanese  
Photographs of Proposed Storage Units for Mr. Salvatore Cantanese  
Copy of Mike Marotta of RWR Self Storage Calling Card