

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
December 27, 2016 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 were made to the ZBA agenda submitted by Wolfgang Buechler.

PUBLIC HEARINGS:

Michael Graham
5171 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 self-standing triangular tower to support a wind turbine generator at a height of 154 feet where the Town Code requirements are as follows:

- i. The minimum distance from any property line is 1.5 times the total height of the tower per the Town Code §247-68.13.B.(1).
Variance Sought: Setback to be less than 1.5 times the tower height from any property line.
- ii. The minimum distance from any off site residence is 500 ft. per the Town Code §247-68.13.B.(3).
Variance Sought: Variance of 145 ft. allowing tower placement 355 ft. from a residential dwelling where a minimum of 500 ft. from a residential dwelling is required.
- iii. Residential wind energy conversion system towers must be of a monopole design per the Town Code §247-68.13.I.(3).
Variance Sought: Variance allowing structure to be a three legged triangular shape where a monopole design is required.
- iv. The maximum tower height is 120 ft. per the Town Code §247-68.13.I.(7).
Variance Sought: Variance of 34 ft. allowing for tower height of 154 ft. where the maximum height allowed is 120 feet.

The property is 61.7 acres & 1.08 acres, and is R-2 medium density residential zoning.

Mr. Graham was present at the meeting and his request was presented by Mr. Tyler Palmer of United Wind. They provided the Town of Pendleton Building Inspector's denial; site survey of the property; specification sheets for the tower & wind generator; and a Google Earth photograph of the tower location with dimensional outer rings from the tower at 250 ft. & 500 feet.

Mr. Tyler indicated that the wind generator with 12 ft. long white finish blades is more efficient at the higher height, and he presented to the ZBA members documentation of the electric savings at 100 ft. & 140 ft. tower elevations. Mr. Tyler suggested that the triangular support design was safer than a monopole design as it required guide wires. He also stated that the removal of climbing pegs to a height of 15 ft. would prevent children from climbing the structure. They also felt that the minimum distance from the property line and any off-site residence should not apply as they only affect Mr. Graham's separate residential property which is inset in the larger farming property.

Neighbors Tex Ellis & Jim Sobczyk were present at the hearing to hear Mr. Graham's plans, and were in support of the project.

Amy Hothow was concerned about the visual impact of the tower as she was not sure her trees would block her view. She was also worried about the sound level (45 db), and possible television & radio interference.

All ZBA members stated that they had driven by or visited the property, but were not able to determine the location of where the tower would be located.

A motion was made by Lee Daigler at approximately 7:55 PM to table the public hearing to get further information related the wind generator specifications, basis of the code from the planning board perspective, proximity to residences, and determine if the Pendle Sub-Division being notified is relevant to the decision. The motion was seconded by Dennis Welka and all voted in favor.

Don Edwards
4744 Meyer Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 1,200 sq. ft. accessory structure on his property where the maximum allowed is 600 sq. ft. per Town Code. The variance request would be 600 sq. ft. as per for Town Code §247-34.E.(1). The property is 1.94 acres and is R-1 low density residential zoning.

Mr. Edwards was not present at the public hearing. The ZBA members reviewed the Town of Pendleton Building Inspector's denial; and site survey of the property.

Mr. Keith Price, his neighbor to the east of the property, was present at the meeting and indicated that the house has been vacant for 5 years and questioned whether the house was livable. He stated that there was someone living in a camper on the property and was using a portable toilet.

A hand written note from Chester & Helen Domagala was received against the variance.

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

A motion was made by Mr. Daigler to table the formal public hearing to obtain further information from the owner, and was seconded by Mr. Buechler. Mr. Meholick, Mr. Welka & Mr. Schlemmer voted against the motion to table the public hearing, and Mr. Buechler & Mr. Daigler voted in favor.

A motion was made by Mr. Meholick to close the formal public hearing, and was seconded by Mr. Schlemmer. Mr. Meholick, Mr. Welka & Mr. Schlemmer voted in favor to close the hearing, and Mr. Buechler & Mr. Daigler voted against.

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

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Jim Schlemmer to accept the minutes of the November 22, 2016 meeting and was seconded by Dennis Welka. All voted in favor.

Specific Board Deliberation Actions:

**Don Edwards
4744 Meyer 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 create an undesirable change to the neighborhood and nearby properties as the existing home was visually in poor shape and the proposed accessory structure was not proportionately appropriate to the home size at 850 square feet. Some ZBA members mentioned that there were several large accessory structures in the neighborhood but that they accompanied 2-story homes.

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

It was agreed that the alternative solution would be to build a smaller, compliant building.

c. Is the requested variance substantial?

It was agreed that the variance request was not substantial based on the property size, but substantial related to town code limit of 600 sq. ft..

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

It was possible that the variance could potentially have an adverse effect on the physical or environmental conditions in the neighborhood, but the members were uncertain.

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 deny the variance as detailed in the request, and was seconded by Mr. Schlemmer. Mr. Meholick, Mr. Welka & Mr. Schlemmer voted in favor to deny the variance, and Mr. Buechler & Mr. Daigler voted against the motion. The variance request was denied.

Correspondence:

1. A letter was received from Mr. Morton thanking the ZBA members for approving his variance request related to the property at 4163 Beach Ridge Road.

Special Topics: *None*

Miscellaneous ZBA Topics:

1. A motion was made by Wolf Buechler to schedule the next meeting on Tuesday, January 24, 2016, at 7:00PM. The motion was seconded by Dennis Welka. All voted in favor.

A motion was made by Dennis Welka to adjourn the meeting at 8:55 PM, and seconded by Jim Schlemmer.

Submitted for:

James G. Meholick
Secretary

Attachments: Filed in the Town Clerk's Office
Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List for Mr. Graham & Mr. Edwards
Town of Pendleton Denial of Building Application for Mr. Michael Graham
Town of Pendleton Public Hearing Request for Mr. Michael Graham
Town of Pendleton Notice of Public Hearing for Mr. Michael Graham
Site Survey of Property for Mr. Michael Graham
Wind Turbine Tower Specification Sheet for Mr. Michael Graham
Wind Turbine Specification Sheet for Mr. Michael Graham
Goggle Earth Photograph of Property for Mr. Michael Graham
Wind Turbine Electrical Savings at 100 ft. Tower Height for Mr. Michael Graham
Wind Turbine Electrical Savings at 140 ft. Tower Height for Mr. Michael Graham
Letter from Mr. Michael Graham
Town of Pendleton Denial of Building Application for Mr. Don Edwards
Town of Pendleton Public Hearing Request for Mr. Don Edwards
Town of Pendleton Notice of Public Hearing for Mr. Don Edwards
Site Survey of Property for Mr. Don Edwards
Acre Calculator of Property for Mr. Don Edwards
Letter from Mr. Ken Morton