

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
January 26, 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 7:00 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:

Joseph McCaffrey
6331 Campbell Boulevard
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 30 ft. x 60 ft. (1,800 sq. ft.) accessory structure with an existing 28 ft. x 32 ft. (896 sq. ft.) accessory structure for a total aggregate area of 2,696 sq. ft. where the maximum allowed is 2,000 sq. ft. per town code, and at a height of 21 ft. where the maximum allowed is 20 ft. per town code. The area variance request would be 696 sq. ft. as per Code Section 247-34.E.(3) and the accessory structure height variance request would be 1 ft. as per Code Section 247-34.F.(3)(d). The size of the property is approximately 8.2 acres and is R-2 medium density residential zoning.

Mr. McCaffrey presented the Town of Pendleton Building Inspector's denial, and a site survey sketch of the property that illustrated the proposed location of the accessory structure with relationship to the house. He indicated that he was planning to purchase a used motor home with approximate dimensions of 8'-6" x 42 ft. and the building at a front yard setback of 460 ft. would be used for storage of his motor home and provide additional space as a work area. The wood building that he is planning to construct will have a concrete floor and will not be heated. It was noted at the meeting that there was another existing 10 ft. x 10 ft. (100 sq. ft.) accessory structure on the property not identified in the application for the public hearing. Mr. McCaffrey indicated to the ZBA members that he would remove this shed from his property.

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

The formal public hearing was closed at approximately 7:07 PM.

Victor Demjanenko
4420 Beach Ridge Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a street in a proposed Forbes Capretto Custom Home subdivision with a 50 ft. right of way width at the intersection with an existing street where a minimum 90 ft. right of way is required per town code. The right of way variance request would be 40 ft. as per Code Section 220-24.A. The size of the property is approximately 50 acres and is R-1 low density residential zoning.

Mr. William Tuyn of Forbes Capretto Custom Homes, and their attorney, Mr. Jeff Palumbo, were present at the meeting to represent the interests of the property owner, Mr. Victor Demjaneko, who was also present at the meeting. Mr. Tuyn presented the Town of Pendleton Subdivision Denial Letter, and a letter from Corey Auerbach of Barclay Damon relating to the ZBA application for variance. Mr. Tuyn indicated to the ZBA members that the New York State minimum width for a street is 49.5 feet and they had not intended to run any utilities underneath this access road. In addition, he stated that the road width would be the standard 28 feet.

Mr. Buechler was concerned that the ZBA did not have jurisdiction to consider variances for Chapter 220 of the town code. Mr. Perlman was of the same opinion as Mr. Buechler. The ZBA members, Mr. Tuyn, and Mr. Palumbo agreed to conduct the public hearing as many concerned citizens were present at the meeting.

Several of the neighbor's near the proposed subdivision were present and spoke at the public hearing as follows:

- * Glenn Christman of 4365 Beach Ridge Road
- * Tim & Gail Gauda of 4378 Beach Ridge Road
- * Lisa Pashew of 4341 Beach Ridge Road
- * Daniel Chase of 6775 Aiken Road
- * Holly Dawson of 4316 Beach Ridge Road
- * Shirley Edbauer of 4355 Beach Ridge Road
- * Eileen Czarnecki of 4385 Beach Ridge Road
- * Barb Ceepul of 4456 Beach Ridge Road

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

1. The neighbor's stated that they were opposed to the subdivision, the road was next to a cemetery & garage, and were concerned that the road would be a safety hazzard. Many questioned if other parcels were wide enough for the access road that met the town code.
2. Many neighbors were interested in how many lots would be in the subdivision and how close they would be to the adjacent properties. It was felt that the country atmosphere would be lost if this subdivision was approved.

3. The neighbors questioned why the ZBA would consider such a large variance, and others were concerned about snow removal, traffic issues due to the increased amount of cars, and the need for a traffic signal at the entrances.
4. Two of the neighbors expressed concern about the headlights shining into their homes from the vehicles exiting the subdivision.

Mr. Jeff Stowell, the Pendleton Highway Superintendent, was present at the meeting and preferred that the road not be choked down as it would be more difficult to remove the snow, and was concerned about fire truck access into the subdivision.

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 Winstel (Continuation of December 2015 Public Hearing)
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.

Mr. Buechler indicated to the ZBA members that he had contacted the Building Inspector's Office and recommended that they re-evaluate their denial of the variance request to conduct a non-conforming use in an R-1 Low Density Residential district. It was 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, and the Building Inspectors are unable to locate the original of the "Grandfathering Document" mentioned in the ZBA minutes.

A motion was made by Mr. Welka to close the public hearing, and was seconded by Mr. Schlemmer. All members voted in favor of closing the public hearing.

**Salvatore Cantanese (Continuation of December 2015 Public Hearing)
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. Buechler indicated to the ZBA members that he received notification of a call from Rick Recckio regarding the ZBA meeting on January 26th. Mr. Recckio represents the owner of the land, Mr. Salvatore Cantanese, and he requested that we cancel their variance agenda item as he wanted to regrop with the Planning Board at their next workshop.

A motion was made by Mr. Buechler to table the public hearing, and was seconded by Mr. Welka. All members voted in favor of tabling the public hearing.

REGULAR ZBA MEETING:

New Inquiries to ZBA:

Mr. Andrew Forrestel of 7180 Creekbend Drive was present at the meeting. At the September 2015 meeting a variance was granted to construct an accessory structure at a front yard setback of 120 feet. Mr. Forrestel requested that the ZBA reopen the public hearing so we could hear his request to move the accessory structure closer to the side of his property. The ZBA members and the town attorney felt that the request was substantial enough that Mr. Forrestel needed to apply for a new public hearing.

Review Minutes from Prior Meeting:

A motion was made by Lee Daigler to accept the minutes of the December 22, 2015 meeting and was seconded by Dennis Welka. All voted in favor.

Specific Board Deliberation Actions:

**Joseph McCaffrey
6331 Campbell Boulevard
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 and nearby properties as the accessory structure would be built approximately 460 ft. from Campbell Boulevard.

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

It was agreed that an alternative solution would be to build a smaller building or tear down the existing accessory structures.

- c. Is the requested variance substantial?

It was agreed that the requested size was substantial as it was 35% larger than the town code allowed.

- 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. Welka to grant the area variance as detailed in the request conditional that the existing 10 ft. x 10 ft. accessory structure be removed from the property, 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.

Correspondence: None

Special Topics:

- 1. No changes to the contact information for the ZBA board were made.
- 2. The ZBA board set the 2016 schedule for the 4th Tuesday of every month with the exception of the months of June, July & August. The meetings for these months will be on a Monday. The meeting dates will be June 27th, July 25th, and August 22nd.

A motion was made by Dennis Welka to accept the 2016 meeting schedule, and was seconded by Jim Meholick. All voted in favor.

- 3. The ZBA board set the 2016 start time for the meetings at 7:00PM.
- 4. The ZBA board reviewed the current sign-in sheet and no changes were made to the current form. The current form has spaces for ten people to sign in. Mr. Buechler will be developing a second page for the sign-in sheet for when we have a large number of people attending the meeting.
- 5. The ZBA board reviewed the current "Request to Petition for a Variance" form and no changes were made.

6. The ZBA board reviewed the 2015 status & rollover balances for training, and 2016 requirements.
7. The ZBA board reviewed the 2015 attendance for each member.
8. The ZBA board reviewed the referral requirement to the Niagara County Planning Board.
9. The ZBA board reviewed the notification requirement to neighboring municipalities.

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Tuesday, February 23, 2015, at 7:00PM.

A motion was made by Jim Schlemmer to adjourn the meeting at 9:25 PM, and seconded by Wolf Buechler.

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. Joseph McCaffrey
Town of Pendleton Public Hearing Request for Mr. Joseph McCaffrey
Town of Pendleton Notice of Public Hearing for Mr. Joseph McCaffrey
Sketch of Proposed Structure on Property for Mr. Joseph McCaffrey
Town of Pendleton Subdivision Denial Letter for Mr. Victor Demjanenko
Town of Pendleton Notice of Public Hearing for Mr. Victor Demjanenko
Letter from Barclay Damon for Mr. Victor Demjanenko