

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS**  
**January 24, 2017 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. The swearing in for Jim Schlemmer's five year term was added to the ZBA agenda submitted by Wolfgang Buechler.

**PUBLIC HEARINGS:**

**Michael Graham (Continuation of December 2016 Public Hearing)**  
**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. Buechler reviewed the above variance requests with the board members and confirmed the following variance requests:

1. The maximum tower height is 120 ft. per the Town Code §247-68.13.I.(7). The total height variance request is 34 feet.
2. Residential wind energy conversion system towers must be of a monopole design per the Town Code §247-68.13.I.(3). The variance request is for an allowance of a triangular tower design.
3. The minimum distance from any off site residence is 500 ft. per the Town Code §247-68.13.B.(3). The variance request of 145 ft. would allow the tower placement 355 ft. from Mr. Graham's residential dwelling.
4. 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). The variance request would allow the tower placement to be 75 ft. from Mr. Graham's property line.

The ZBA members assessed the character of the neighborhood & the visual impact of the proposed tower height for the neighboring properties and the Pendale sub-division. Also discussed was the intent behind the town code's height limit & tower restrictions with respect to a monopole & triangular design. The board considered that Mr. Graham's problems with the height & design limits were not unique to his property and that they would affect almost any property in the Town. The board also considered that the setback problems were solely the result of an existing, inset residential lot owned & occupied by Mr. Graham and that no other neighboring property setbacks were at issue.

Neighbors Mike Calzone & Flora Torina were present at the hearing and were concerned about the visual height at 154 ft. and the possibility of their home & property losing value.

Mr. Mark O'Brien was present at the hearing to hear Mr. Graham's plans, and learn how the electric produced by the wind generator feeds to the utility.

The public hearing was closed at approximately 7:30 PM.

### **REGULAR ZBA MEETING:**

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

A motion was made by Jim Schlemmer to accept the minutes of the December 27, 2016 meeting and was seconded by Dennis Welka. All voted in favor.

***Specific Board Deliberation Actions:***

**Michael Graham  
5171 Tonawanda Creek Road  
Pendleton, New York**

***Requirement IV: Town Code §247-68.13.I.(7) for maximum tower height of 120 feet.***

A motion was made by Mr. Welka to deny the variance request for the additional 34 ft. of tower height, and was seconded by Mr. Meholick.

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 it would have a negative visual impact at the 154 ft. height requested.

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

It was agreed that the alternative solution would be to build the wind turbine generator compliant of town code at 120 feet.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial as it was approximately 25% greater than town code.

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

It was felt that the variance would have an adverse effect on the physical or environmental conditions in the neighborhood due to the visual impact at the higher height.

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

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

ZBA members Mr. Meholick, Mr. Welka, Mr. Buechler & Mr. Daigler voted in favor to deny the variance, and Mr. Schlemmer voted against the motion to deny. The request for height variance was denied.

**Requirement III: Town Code §247-68.13.I.(3) requiring that residential wind energy system towers must be of monopole design.**

A motion was made by Mr. Buechler to deny the variance request for a self supporting triangular wind energy system tower design in lieu of a monopole design, and was seconded by Mr. Daigler.

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 create an undesirable change to the neighborhood and nearby properties as it was felt either design would be acceptable.

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

It was agreed that the alternative solution would be to build the wind turbine generator compliant of town code with a monopole design.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial as it was triangular and the town code required a monopole design.

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

It was felt 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 not self-created as the town code is causing this issue.

ZBA members Mr. Schlemmer, Mr. Welka, Mr. Buechler & Mr. Daigler voted in favor to deny the variance, and Mr. Meholick voted against the motion to deny. The request for the triangular tower design variance was denied.

**Requirement II:** *Town Code §247-68.13.B.(3) requiring the minimum distance from any off site residence be 500 feet.*

A motion was made by Mr. Meholick to grant the variance request of 145 ft. to the setback from off-site residence, limited specifically & solely to Mr. Graham's current residence, and with the condition that the project be completed in one year. The motion was seconded by Mr. Welka.

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 create an undesirable change to the neighborhood and nearby properties as it impacted only Mr. Graham.

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

It was agreed that the alternative solution would be to build the wind turbine generator further back on the property compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the variance request was not substantial as it only affected Mr. Graham.

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

It was felt 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.

All ZBA members voted in favor of the motion.

**Requirement I:** *Town Code §247-68.13.B.(1) requires that the distance from any property line is 1.5 times the total height of the tower.*

A motion was made by Mr. Meholick to grant the variance request of 25 ft. to the setback from Mr. Graham's own inset property line computed using the maximum tower/system height of 120 ft., and with the condition that the project be completed in one year. The motion was seconded by Mr. Schlemmer.

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 create an undesirable change to the neighborhood and nearby properties as it impacted only Mr. Graham.

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

It was agreed that the alternative solution would be to build the wind turbine generator further back on the property compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the variance request was not substantial as it only affected Mr. Graham.

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

It was felt 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.

All ZBA members voted in favor of the motion.

***Correspondence:     None***

***Special Topics:***

- 1.     No changes to the contact information for the ZBA board were made.

- 2.     The ZBA board set the 2017 schedule for the 4<sup>th</sup> Tuesday of every month.

A motion was made by Dennis Welka to accept the 2017 meeting schedule, and was seconded by Jim Meholick. All voted in favor.

- 3.     The ZBA board set the 2017 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 2016 status & rollover balances for training, and 2017 requirements.
7. The ZBA board reviewed the 2016 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.
10. Reappointment Status: Jim Schlemmer was reappointed to a 5 year term and Wolf Buechler as 2017 Chairmen at the town board meeting on January 9, 2017.
11. Jim Schlemmer was sworn in by Wolf Buechler for his new 5 year term on the ZBA.

***Miscellaneous ZBA Topics:***

1. The next scheduled meeting will be on Tuesday, February 28, 2017, at 7:00PM.

A motion was made by Lee Daigler to adjourn the meeting at 8:45 PM, and seconded by Dennis Welka.

Submitted for:

James G. Meholick  
Secretary

Attachments: Town of Pendleton Zoning Board of Appeals Sign-In Sheet