

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
July 23, 2014 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. ZBA members Mr. Buechler, Mr. Schlemmer, Mr. Welka, and Mr. Meholick were present at the meeting. No changes to the ZBA agenda submitted by Wolfgang Buechler were made.

PUBLIC HEARINGS:

Tony Moscato
7192 Creekbend Drive
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct an addition to his house with a side yard setback of 5 ft. where 15 ft. minimum is allowed per town code. The side yard setback variance request would be 10 ft. as per Code Section 247-11.E. The size of the property is 0.67 acres and is R-2 medium density residential zoning.

Mr. Moscato indicated that he wanted to enclose his existing slate & stone 20 ft. x 20 ft. patio that was behind his home. In order to maintain the lines of his home with the pie shaped lot and due to an error in the original site survey he was requesting a 5 yard setback. The patio addition would match his home and he would provide gutters with drainage away from his house.

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

The formal public hearing was adjourned at approximately 7:15 PM.

Tom & Lind Waild / (Ken Morton prospective buyer)
4163 Beach Ridge Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to sub-divide property creating a non-conforming lot with a lot width of 106 ft. where a 125 ft. minimum lot width is allowed per town code. The lot width variance request would be 19 ft. as per Code Section 247-10.(C)(1). The size of the property is approximately 106 ft. x 552 ft. (1.34 acres) and is R-1 low density residential zoning.

Mr. Morton presented a packet of information that contained a letter to the ZBA with his personal history & reasons for wanting to purchase this property, a second letter to the ZBA describing several attachments that he wanted us to consider; a letter to Joe Kania indicating that he wanted to purchase the property from Tom & Linda Waild who signed the letter authorizing Mr. Morton to act on their behalf, an E-mail from Ken Morton to Joe Kania, a letter from his surveyor McIntosh & McIntosh, and a site survey of the proposed sub-divided lot. He also presented several attachments that included a sketch of the neighborhood that highlighted the proposed lot, a photograph of the lot in question with a comment that they would remove the existing garage, a tree line photograph of the lot, a photograph of the current Waild home, an aerial photograph of the proposed lot & new home location, a second aerial photograph of the Stanley Woodcock lot indicating an 80 ft. front yard width, and a photograph of the proposed ranch style house.

Mr. Morton indicated that the minimum lot width he was requesting is 106 feet, but could be as wide as 114 feet. He wouldn't be able to confirm this until a formal survey was completed and didn't want to pay for the survey if the variance wasn't granted. He intended to build a 1,600 to 1,800 sq. ft. ranch house of 40 ft. width on the lot with 25 ft. to 30 ft. on either side of his house. He was also concerned with water issues in the neighborhood and would add drain pipes & fill for drainage.

Mr. Buechler noted to the ZBA members that there were at least four properties in the vicinity with non-conforming lot widths of 75 ft. at 4152 Beach Ridge Road, 100 ft. at 4178 & 4173 Beach Ridge Road, and 118 ft. at 4174 Beach Ridge Road. Another non-conforming property was denied by the ZBA in 1992, but was overturned through an Article 78 action. A home was built on this property in 2012.

Several neighbors were present at the public hearing and voiced concerns regarding water drainage and preservation of the rural character of the neighborhood.

Carol & Stan Woodcock of 4173 Beach Ridge Road felt that the proposed house would be too close to their home and would create water drainage issues as property would be lower than the proposed lot if any significant fill was brought in. The Woodcocks confirmed that their property was 80 ft. wide and that the garage had a side yard setback of 8 ft. from the proposed lot. Their home was originally built before the zoning of the neighborhood and the garage was built after obtaining a variance.

Brian Bors of 4162 Beach Ridge Road wanted to maintain the rural nature of the area and felt the ZBA should maintain the R-1 zoning with a 125 ft. lot width. He also indicated that he would not consider sub-dividing his 300 ft. lot for that same reason. Mr. Bors indicated that most of the non-conforming lots in the neighborhood existed before the R-1 Zoning was applied.

Sean & Nancy Norlund of 4179 Beach Ridge Road liked the rural nature of the neighborhood and wanted the ZBA to maintain the wider lot width. They also indicated that there was water in the back of their property 7 months out of the year and felt that the increased density of the area would create additional drainage problems.

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

The formal public hearing was adjourned at approximately 7:45 PM.

**Nancy McNamara
4749 Mapleton Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure with a 5 ft. side yard setback where 15 ft. minimum is allowed per town code. The property also includes a 12 ft. x 14 ft. (168 sq. ft.) accessory structure, for a total area of 1,368 sq. ft. with the new structure where the maximum allowed is 600 sq. ft. per town code. The side yard setback variance request would be 10 ft. as per Code Section 247-11.A.(5) to 274-34.F.(2)(b). The area variance request would be 768 sq. ft. as per Code Section 247-11.A(5) to 247-34.E.(1). The size of the property is approximately 100 ft. x 333 ft. (0.76 acres) and is R-2 medium density residential zoning.

The McNamara's indicated that they wanted to build a 30 ft. wide x 40 ft. long accessory structure to store their vehicles. The 5 ft. side yard variance request was due to a septic system behind their house that was even with the left side of their home. They stated that they would be in compliance with the 150 ft. front yard setback. In addition, the 7 acre property to the left had approximately a 200 ft. frontage, but was much lower than their property and would require a significant amount of fill before a residence could be built on it.

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

The formal public hearing was adjourned at approximately 7:57 PM.

**John Griesmer
7203 Creekbend Drive
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 12 ft. x 12 ft. accessory structure at a front yard setback of 106 ft. where 150 ft. minimum is allowed per town code. The front yard setback variance request would be 44 ft. as per Code Section 247-34.A.(5) to 247-34.F(2)(a). The size of the property is 100 ft. x 250 ft. (0.57 acres) and is R-2 medium density residential zoning.

Barbara & Joseph Lauzonis were present at the meeting to represent their son-in-law John Griesmer. They presented a packet of information that contained a letter from Mr. Griesmer to the ZBA authorizing the Lauzonis's to represent him at the public hearing, a photograph of the back of their home, a site survey illustrating where the structure would be located, a letter indicating the reasons for the variance request, and a sketch of the location of the accessory structure in relationship to the house with reasons for the proposed location.

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

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

REGULAR ZBA MEETING:

New Inquiries to ZBA:

Cheryl Borner
4872 Meyer Road
Pendleton, New York

Mr. Michael Borner has inquired about constructing a new 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure with a 8 ft. x 40 ft. (320 sq. ft.) overhang for a total area of 1,520 sq. ft. where the maximum allowed is 600 sq. ft. per town code. The area variance request would be 920 sq. ft. as per Code Section 247-10.A(5) to 247-34.E.(1). The size of the property is approximately 2 acres and is R-1 low density residential zoning.

Mr. Meholick filled out an application for a public hearing, and Mr. Buechler instructed Mr. Borner on how to file the application with the town clerk.

Chris Rathman
5755 Fisk Road
Pendleton, New York

Mr. Chris Rathman has inquired about constructing a new 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure with a 8 ft. x 40 ft. (320 sq. ft.) overhang for a total area of 1,520 sq. ft. where the maximum allowed is 600 sq. ft. per town code. The area variance request would be 920 sq. ft. as per Code Section 247-10.A(5) to 247-34.E.(1). The size of the property is approximately 1.6 acres and is R-2 medium density residential zoning.

Mr. Meholick filled out an application for a public hearing, and Mr. Buechler instructed Mr. Rathman on how to file the application with the town clerk.

Kevin Keetch
4593 Mapleton Road
Pendleton, New York

Mr. Kevin Keetch has inquired about constructing a new 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure on his property that also includes an existing 26.2 ft. x 22.2 ft. (581.6 sq. ft.) accessory structure, for a total area of 1,781.6 sq. ft. where the maximum aggregate area allowed is 1,200 sq. ft. per town code. The area variance request would be 581.6 sq. ft. as per Code Section 247-34.E.(2). The size of the property is approximately 2.8 acres and is CO-1 light commercial zoning however it is currently used as residential.

Mr. Meholick filled out an application for a public hearing, and Mr. Buechler instructed Mr. Keetch on how to file the application with the town clerk.

Review Minutes from Prior Meeting:

A motion was made by Dennis Welka to accept the minutes of the June 25, 2014 meeting and was seconded by Jim Schlemmer. All voted in favor.

Specific Board Deliberation Actions:

**Tony Moscato
7192 Creekbend Drive
Pendleton, New York**

After discussion, Mr. Buechler made a motion to table the vote until all ZBA members were present at the meeting. The motion was seconded by Mr. Meholick. All voted in favor.

**Ken Morton
4163 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 and nearby properties. The ZBA members recognized the need to maintain the rural character of the area as expressed by the neighbors, but there were several homes already in the area with non-conforming lot widths.

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

It was agreed that alternate solution would be not to sub-divide the property.

- c. Is the requested variance substantial?

It was agreed that the variance request was not substantial. At maximum the variance would be for 19 ft. but possibly only 11 ft. depending on the formal survey results.

- 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.

After discussion, Mr. Buechler made a motion to grant the lot width variance request as applied subject to the condition that a 30 ft. side yard setback will be maintained for all structures built on the property, including but not limited to house, garage and accessory structures. The motion was seconded by Mr. Meholick. All voted in favor.

Nancy McNamara
4749 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 and nearby properties as the request was not out of character for the area presuming that the smaller, existing building would be removed.

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

It was agreed that the alternate solution would be to build a smaller accessory structure.

- 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 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.

After discussion, Mr. Buechler made a motion to grant a 5 ft. side yard variance (rather than the requested 10 ft. variance), and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Meholick. All voted in favor.

Mr. Buechler made a second motion to grant the 1,200 sq. ft. area variance request as requested conditional upon the removal of the existing structure at completion, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Meholick. Mr. Meholick, Mr. Buechler & Mr. Schlemmer voted in favor of the motion. Mr. Welka voted against the motion. The variance request passed.

John Griesmer
7203 Creekbend 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 majority of the board members felt that the granting of the variance would not have an undesirable change to the neighborhood and nearby properties as it would preserve the view of the pond for the neighbors located on the pond lots.

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

Mr. Welka felt that an alternate solution would be move the structure further back in the property and remain compliant with the town code. As this alternative would block the pond view of the neighbors, it was not considered desirable by the remainder of the Board.

- 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 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.

After discussion, Mr. Meholick made a motion to grant the variance as applied, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Buechler. Mr. Meholick, Mr. Buechler & Mr. Schlemmer voted in favor of the motion. Mr. Welka voted against the motion. The variance request passed.

Correspondence: *None*

Special Topics: *None*

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Wednesday, August 27, 2014, at 7:00PM.

A motion was made by Wolfgang Buechler to adjourn the meeting at 9:30 PM, and seconded by Jim Schlemmer.

Submitted by:

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 Moscato Public Hearing
 - Public Hearing Mailing List for Morton & McNamara Public Hearings
 - Public Hearing Mailing List for Griesmer Public Hearing
 - Town of Pendleton Notice of Public Hearing for Mr. Tony Moscato
 - Town of Pendleton Notice of Public Hearing for Mr. Ken Morton
 - Letter #1 to Wolf Buechler of ZBA from Mr. Ken Morton
 - Letter #2 to Wolf Buechler of ZBA from Mr. Ken Morton
 - Letter to Joe Kania from Mr. Ken Morton
 - E-mail to Joe Kania from Mr. Ken Morton
 - Letter from McIntosh Surveyors from Mr. Ken Morton
 - Site Survey of Property from Mr. Ken Morton
 - Attachment #1 from Mr. Ken Morton
 - Attachment #2 from Mr. Ken Morton
 - Attachment #3 from Mr. Ken Morton
 - Attachment #4 from Mr. Ken Morton
 - Attachment #5 from Mr. Ken Morton
 - Attachment #6 from Mr. Ken Morton

Town of Pendleton Notice of Public Hearing for Ms. Nancy McNamara

Town of Pendleton Notice of Public Hearing for Mr. John Griesmer

Letter to ZBA from Mr. John Griesmer

Photograph of Home from Mr. John Griesmer

Site Survey of Property from Mr. John Griesmer

Description of Proposed Structure from Mr. John Griesmer

Sketch of Proposed Structure Location from Mr. John Griesmer

Town of Pendleton Denial of Building Application from Ms. Cheryl Borner

Town of Pendleton Public Hearing Request from Ms. Cheryl Borner

Letter to ZBA from Ms. Cheryl Borner

Sketch of Proposed Structure with Contents from Ms. Cheryl Borner

Site Survey of Property from Ms. Cheryl Borner

Town of Pendleton Denial of Building Application from Mr. Chris Rathman

Town of Pendleton Public Hearing Request from Mr. Chris Rathman

Site Survey of Property from Mr. Chris Rathman

Town of Pendleton Denial of Building Application from Mr. Kevin Keetch

Town of Pendleton Public Hearing Request from Mr. Kevin Keetch

Site Survey #1 of Property from Mr. Kevin Keetch

Site Survey #2 of Property from Mr. Kevin Keetch