

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
July 25, 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 7:08 PM. Mr. Buechler, Mr. Daigler, Mr. Welka, and Mr. Meholick were present at the meeting. No changes to the ZBA agenda submitted by Wolfgang Buechler were made.

PUBLIC HEARINGS:

Jessica Kennedy
6099 East Canal Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 10 ft. x 20 ft. (200 sq. ft. accessory structure at a front yard setback of 125 ft. where the minimum required is 150 ft. per town code. The front yard setback variance would be 25 ft. as per Code Section §247-34.F.(2)(A). Property is 0.93 acres and is R-2 medium density residential zoning.

Ms. Kennedy presented the Town of Pendleton Building Inspector's denial, and a site survey sketch of the property that illustrated the location of the proposed shed. It was noted that the Kennedy's had already started construction of the shed, and there was nothing in behind the structure to prevent it from being further back in the property to meet town code. In addition, there were concrete footers in front of the shed for a garage. Ms. Kennedy indicated that they had looked into building a garage, but it was more expensive than the shed. She also confirmed that the shed was 6 ft. away from the garage footers and that they preferred the shed be close to the house for easy access.

Mr. Rick Kipp, the father & neighbor, was present at the meeting and was okay with the location of the accessory structure.

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

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

Tara Richards
5812 Fisk Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct an above ground pool at a side yard setback of 11 ft. where the minimum is 15 ft. per town code. The side yard setback variance request would be 4 ft. per Code Section §222-2.C. Property is 0.88 acres and is R-2 medium density residential zoning.

Ms. Richards presented the Town of Pendleton Building Inspector's denial, and a site survey sketch of the property that illustrated the location of the proposed 24 ft. diameter pool. Ms. Richards indicated that there is an existing septic system approximately 1 ft. below grade behind the house, and that the installation contractor preferred that the pool be erected at least 3.5 ft. from the septic system. This would place the pool at an 11 ft. side yard setback. Ms. Richards also stated that they had planned to install a locking ladder with pool alarm, and in the future they were going to build a deck to access the pool.

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

The formal public hearing was closed at approximately 7:25 PM.

John Higgins
7201 Pendale Circle
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 8 ft. x 16 ft. (128 sq. ft.) accessory structure at front yard setback of 122.66 ft. where minimum required is 150 ft. per town code. The front yard setback variance request would be 27.34 ft. per Code Section §247-34.F.(2)(A). Property is 0.57 acres and is R-2 medium density residential zoning.

Mr. Higgins presented the Town of Pendleton Building Inspector's denial, and a site survey sketch of the property that illustrated the location of the accessory structure. It was noted that the accessory structure already existed on the property. Mr. Higgins indicated that he located the building near his house so it would not affect his neighbor's view of the pond.

Several of his Pendale Circle neighbor's that included David & Linda Grant, Bob Braun, and Sandy Masterson were present at the meeting and offered support for his variance request. They did not want the shed located in the back of his property as it would affect the view of the pond. Sandy Masterson indicated to the ZBA members that the original subdivision rules did not allow for accessory structures blocking the view of the pond in Pendale Circle.

Several E-mails were also sent to the Town Clerk, Terry Pienta; from Joe Hickman, Paul Kazmierczak, and Dave & Linda Grant in favor of granting the variance request.

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

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

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Lee Daigler to accept the minutes of the June 27, 2016 meeting and was seconded by Dennis Welka. All voted in favor.

Specific Board Deliberation Actions:

**Jessica Kennedy
6099 East Canal 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 create an undesirable change to the neighborhood and nearby properties as it was an older area of Pendleton.

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

It was agreed that an alternative solution would be to move the shed further back in the property compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the requested area variance was not substantial as it was 15% of town code.

- 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. Daigler to approve the variance as detailed in the request, and was seconded by Mr. Meholick. Mr. Daigler, Mr. Meholick & Mr. Buechler voted in favor of granting the variance request, and Mr. Welka voted no. The variance request was approved.

Tara Richards
5812 Fisk Road
Pendleton, New York

A motion was made by Mr. Buechler to table the deliberation in order to visit the property a second time to verify the location of the septic system. The motion was seconded by Mr. Welka. All voted in favor.

John Higgins
7201 Pendale Circle
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 create an undesirable change to the neighborhood and nearby properties as the neighbor's felt it was a desirable location that didn't affect the view of the pond.

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

It was agreed that the alternative solution would be to relocate the accessory structure within the fenced area further back in the property compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the requested area variance was not substantial as the request was 18% of the town code.

- 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. Meholick to approve the variance as detailed in the request, and was seconded by Mr. Daigler. Mr. Daigler, Mr. Meholick & Mr. Buechler voted in favor of granting the variance request, and Mr. Welka abstained from voting. The variance request was approved.

**Thomas Grimmer (Continuation of June 2016 Public Hearing)
7172 Bear Ridge Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 48 ft. x 30 ft. (1,440 sq. ft.) accessory structure at front yard setback of 60 ft. where minimum required is 150 ft. per town code. The front yard setback variance sought is 90 ft. per Code Section §247-34.F.(3)(A). Property is 19.6 acres and is R-1 low density residential zoning.

Mr. Grimmer indicated to the ZBA members that he was increasing the accessory structure size to 32 ft. x 48 ft. (1,536 sq. ft.) and that the building would face in the same plane at a 15 ft. distance from the house with a 16 ft. overall height.

A motion was made by Mr. Welka to table the deliberation to further review whether the variance request should be for an accessory structure or detached garage. There was no second on this motion.

A motion was then made by Mr. Daigler to approve the variance as detailed in the request with the above changes, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Meholick. Mr. Daigler, Mr. Meholick & Mr. Buechler voted in favor of granting the variance request, and Mr. Welka voted no. The variance request was approved.

New Inquiries: *None*

Correspondence: *None*

Special Topics: *None*

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Monday, August 22, 2016, at 7:00PM.

A motion was made by Wolf Buechler to adjourn the meeting at 8:45 PM, and seconded by Jim Meholick.

Submitted for:

James G. Meholick
Secretary

Attachments: Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List for Kennedy, Richards & Higgins
Town of Pendleton Denial of Building Application for Ms. Jessica Kennedy
Town of Pendleton Public Hearing Request for Ms. Jessica Kennedy
Town of Pendleton Notice of Public Hearing for Ms. Jessica Kennedy
Site Survey of Property for Ms. Jessica Kennedy
Town of Pendleton Denial of Building Application for Ms. Tara Richards
Town of Pendleton Public Hearing Request for Ms. Tara Richards
Town of Pendleton Notice of Public Hearing for Ms. Tara Richards
Site Survey of Property for Ms. Tara Richards
Town of Pendleton Denial of Building Application for Mr. John Higgins
Town of Pendleton Public Hearing Request for Mr. John Higgins
Town of Pendleton Notice of Public Hearing for Mr. John Higgins
Site Survey of Property for Mr. John Higgins
E-mail from Joe Hickman for Mr. John Higgins
E-mail from Paul Kazmierczak for Mr. John Higgins
E-mail from Dave & Linda Grant for Mr. John Higgins