

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
July 25, 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 7:02 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:

Tom Scozzafava
7338 Paddock Ridge
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct an accessory structure 16 ft. x 20 ft. (320 sq. ft.) accessory structure at a 90 ft. front yard setback where a minimum of 150 ft. is required per Town Code. The front yard variance request would be 60 ft. as per Town Code §247-34.F(2)(a). The property is 0.57 acres and is R-2 medium density residential zoning.

Mr. Scozzafava presented the Town of Pendleton Building Inspector's denial, and a site survey with the accessory structure location on the property. Mr. Scozzafava indicated that he wanted the accessory structure close to the existing driveway for another car & storage of miscellaneous yard items.

It was noted that there was a second 14 ft. x 20 ft. (280 sq. ft.) accessory structure on the property. The 600 sq. ft. total area of both accessory structure meets the Town Code. There also is a pergola in the back yard, but is not considered an accessory structure by the Building Department as it does not have a solid covering.

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

The public hearing was closed at approximately 7:20 PM.

Tony Madonia
4881 Tonawanda Creek Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 50 ft. x 100 ft. (5,000 sq. ft.) building at a 20 ft. side yard setback from a residential zone where a minimum of 100 ft. is required per Town Code. The side yard variance request would be 80 ft. as per Town Code §247-12.E. The property is 1.6 acres and is CO1 Light Commercial zoning.

Mr. Madonia presented the Town of Pendleton Building Inspector's denial, letter from the Wendelville Fire Company authorizing Mr. Madonia to petition the ZBA for a variance on the property, site survey of the property, and overhead photographs with the accessory structure location on the property. Mr. Madonia indicated that he was pursuing the purchase the property if the variance was approved.

Mr. Madonia stated that the building would be used as a truck shop with an air compressor & lifts for general maintenance of his vehicles. He would also use the building for storage of his trucks, race cars, and recreational vehicle. The doors of the building would face new Tonawanda Creek Road. He also owns three 10-wheel dump trucks that he would park outside the building. The trucks would be started at approximately 6:30AM during the week and his location preference for the building was to keep the trucks as far away as possible from the residential properties to minimize the noise.

Mr. Madonia was planning to leave the picnic area intact and was considering leasing the grounds for social events. The existing building would also be rented for parties & social events, and a possible future restaurant. He was also planning to clean up the foliage in front of the building for a future boat dock.

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

- * Carl & Julie Richardson
- * Gail Hofmann
- * Davis Garland
- * Peter Bayer
- * Elmer Walter
- * Joe Panepento
- * Joe Kuhn

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

1. Many neighbors expressed concern about the lack of parking if social events were held in the picnic area, boat dock & main building; and the additional traffic on Old Tonawanda Creek Road creating safety issues for young children.

2. The neighbor's stated that they were in general okay with the building, but were opposed to it being constructed at the 20 ft. distance from the residential property line.
3. Many neighbors were concerned about the noise & emissions from the 10-wheel dump trucks and race cars.
4. The neighbors were concerned about potential water drainage, flooding & run-off issues from an accessory structure of this size..

Mr. Joe Panepento indicated that he didn't believe the proposed building would cause drainage issues to the neighboring properties. He felt it was a reasonable business for the property and that Mr. Madonia has kept his business location clean on Erie Avenue in North Tonawanda.

Mr. Joe Kuhn has known Mr. Madonia through his real estate business and stated that he has been in business for 20 years, and has always obeyed & been compliant with the state rules & regulations for his type of business.

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

The public hearing was closed at approximately 8:12 PM.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Dennis Welka to accept the minutes of the June 27, 2017 meeting, and was seconded by Lee Daigler. All voted in favor.

Specific Board Deliberation Actions:

**Tom Scozzafava
7338 Paddock Ridge
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 more practical to locate the accessory structure closer to the driveway.

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

It was agreed that that an alternative solution would be to locate the building further back in the property to meet town code, but this would create visual impact to more neighboring properties than the proposed location.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial if the building was considered an accessory structure, but not if it was a garage.

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

The board members 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.

A motion was made by Mr. Daigler to grant the area variance as detailed in the request with the condition that the project be completed in one year. The motion was seconded by Mr. Schlemmer. Mr. Buechler, Mr. Daigler, Mr. Meholick & Mr. Schlemmer voted in favor of the variance request; and Mr. Welka voted against the request. The variance request was granted.

Tony Madonia
4881 Tonawanda Creek Road
Pendleton, New York

A motion was made by Mr. Buechler to table the deliberation for one month to determine if this is a use permitted by right. The motion was seconded by Mr. Welka. All voted in favor.

Mary Pinzone (Continued from June 2017)
4729 Mapleton Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a parking area in front of an existing building at a 30 ft. setback where the minimum building front setback allowed is 50 ft. per Town Code. The variance request would be 20 ft. as per Town Code §247-12.G.(2). The property is 1.46 acres and is Light Commercial zoning.

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.

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

It was agreed that that an alternative solution would be to utilize the parking developed during the site plan review and approved by the Planning Board.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial and a potential safety hazard as cars could potentially pull out on to the highway.

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

The board members felt that the variance would have an adverse effect on the physical or environmental conditions in the neighborhood as the requested parking encroaches the road.

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

It was agreed that the applicant's difficulty was self-created as the site plan was not followed.

A motion was made by Mr. Buechler to deny the setback variance as detailed in the request, and was seconded by Mr. Welka. All voted in favor.

**John Winstel (Continued from May 2017)
4097 Beach Ridge Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to utilize the property for his small general contracting business and is seeking a determination that this is a continuation of current non-conforming use. The size of the property is approximately 1.1 acres and is R-1 low density residential zoning.

Mr. Buechler indicated that he had received notification from Mr. Winstel that he was withdrawing his variance request for the non-conforming use of the property.

Don Meyer (Continued from June 2017)
5924 Fisk 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 72 ft. (3,456 sq. ft.) accessory structure on his property where the maximum allowed is 1,200 sq. ft. per Town Code. The area variance request would be 2,256 sq. ft. as per Town Code §247-34.E(2). The property is 5.1 acres and is R-2 medium density residential zoning.

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 due to the size and potential water run-off issues.

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

It was agreed that that an alternative solution would be to construct an accessory structure that met town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was almost three times larger than town code allows.

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

The board members felt that the variance would have an adverse effect on the physical or environmental conditions in the neighborhood due to possible drainage issues.

- 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. Schlemmer to deny the area variance as detailed in the request, and was seconded by Mr. Welka. All voted in favor.

**Empire Pipeline, Inc.
4281 Killian Road
Pendleton, New York**

Applicant requests a determination that it is an “essential service” under Town Code §247-4; or, in the alternative, requests a use variance to place, construct and/or operate a natural gas compressor facility on the site. The property is 20 acres and is Light Industrial zoning.

Mr. Buechler indicated that there would also be no further discussion related to the Empire Pipeline variance, but mentioned that he had forwarded copies of the post-hearing public comments to Empire and that those comments are available by FOIL to the Town Clerk.

New Inquiries to ZBA: None

Correspondence: None

Special Topics: None

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Wednesday, August 23, 2017, at 7:00PM.

A motion was made by Schlemmer to adjourn the meeting at 9:12 PM, and seconded by Dennis Welka. All voted in favor.

Submitted for:

James G. Meholick
Secretary

Attachments: On file in the Town Clerk’s Office
Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List for Scozzafava & Madonia

Town of Pendleton Denial of Building Application for Mr. Tom Scozzafava
Town of Pendleton Public Hearing Request for Mr. Tom Scozzafava
Town of Pendleton Notice of Public Hearing for Mr. Tom Scozzafava
Site Survey of Property for Mr. Tom Scozzafava

Town of Pendleton Denial of Building Application for Mr. Tony Madonia
Town of Pendleton Public Hearing Request for Mr. Tony Madonia
Town of Pendleton Notice of Public Hearing for Mr. Tony Madonia
Site Survey #1 of Property for Mr. Tony Madonia
Site Survey #1 of Property for Mr. Tony Madonia
Overhead Photograph #1 of Building Location for Mr. Tony Madonia
Overhead Photograph #2 of Building Location for Mr. Tony Madonia
Letter from Wendelville Fire Company for Mr. Tony Madonia