

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
June 27, 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 7:05 PM. All ZBA members were present at the meeting. No changes were made to the ZBA agenda submitted by Wolfgang Buechler.

PUBLIC HEARINGS:

Mary Pinzone
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.

Ms. Pinzone presented the Town of Pendleton Building Inspector's denial, and indicated that they wanted to rent space in the front of the existing building which would require additional parking. At a distance of approximately 6 ft. per car, they would be able to fit eight parking spaces in the available 50 ft. frontage. The parking area would extend approximately 30 ft. from the front of the building. There was an existing septic tank on the opposite side of the building which prevented them from adding the additional parking at that location.

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

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

Kevin Clark
5427 Oakwood Drive
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 20 ft. x 30 ft. (600 sq. ft.) addition and 8 ft. x 32 ft. (256 sq. ft.) lean-to to an existing pole barn. The two additions total 856 sq. ft. bringing the total accessory structure area, including two existing structures, to 2,056 sq. ft. where the maximum allowed is 1,200 sq. ft. per Town Code. The area variance request would be 856 sq. ft. as per Town Code §247-34.E(2). The property is 5 acres and is R-2 medium density residential zoning.

Mr. Clark presented the Town of Pendleton Building Inspector's denial, and a site survey with the accessory structure location on the property. Mr. Clark indicated that the 20 ft. x 30 ft. width addition would be located in the rear of the building, and the lean-to on the front of the building facing his residence.

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

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

Tom Elberson
5828 Dunnigan Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct an accessory structure on a vacant lot prior to construction of the primary residence where Town Code respectively requires accessory structures to be "in conjunction with a principal residence", "subordinate to the principals residence", and "located on same lot as the principal residence". The variance sought is right to build an accessory structure prior to construction of a residence as per Town Code §247-11.A(5), §247-34.A(1), and §247-34.A(3). The property is 1.6 acres and is R-2 medium density residential zoning.

Mr. Elberson presented the Town of Pendleton Building Inspector's denial, and a site survey with the proposed 20 ft. x 30 ft. (600 sq. ft.) accessory structure & future primary residence location on the property. Mr. Elberson indicated that he would be building a ranch house on the property within one year.

Mr. Buechler pointed out that a previous decision allowed the applicant to build the accessory structure before the house as long as he applied for a permit to construct the house & accessory structure at the same time, and within a one year period of time.

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

The public hearing was closed at approximately 7:35 PM.

Dale Acker
6555 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 40 ft. (1,200 sq. ft.) detached garage on his property where the maximum allowed is 438 sq. ft. per Town Code (50% of the primary residence floor area), and with a side lot setback of 12 ft. where the minimum allowed is 15 ft. per Town Code. The square foot variance request would be 762 sq. ft. as per Town Code §247-11.I, and the side yard variance request would be 3 ft. as per Town Code §247-11.E. The property is 0.58 acres and is R-2 medium density residential zoning.

Mr. Acker presented the Town of Pendleton Building Inspector's denial, a site survey with the detached garage location on the property, and a photograph of the proposed building with an overall height of approximately 20 feet. Mr. Ackers indicated that there was a septic system in the front of his house.

It was noted from the site survey that the property was only 0.58 acres as opposed to 1.5 acres listed on the public hearing request, and that the house was approximately 876 sq. ft. instead of 1,200 square feet. The variance request was amended as indicated above.

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

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

Don Meyer
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.

Mr. Meyer presented the Town of Pendleton Building Inspector's denial, and a site survey with the accessory structure location on the property. Mr. Meyer indicated that the accessory would consist of a 48 ft. x 56 ft. main building and a 16 ft. x 48 ft. lean-to in the back of the accessory structure with a maximum height of approximately 20 feet. The pole barn would be located approximately 300 ft. from the right of way and would be used for cold storage of his trailers, bobcat, and four vehicles that he uses for his landscaping business. He indicated to the ZBA members that no customers would visit his home as he has a separate building for his business.

Mr. Meyer's neighbor, Mr. Chris Guadagno, was present at the public hearing and was okay with the proposed building size on the property.

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

The public hearing was closed at approximately 8:05 PM.

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. Winstel, Real Estate Salesperson for Pyramid Brokerage Company, and the potential owner were not present at the meeting to discuss their plans for the property. A nearby resident to this property, Mr. Dan Hubbard, was present at the meeting.

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 May 23, 2017 meeting, and was seconded by Jim Schlemmer. All voted in favor.

A motion was made by Dennis Welka to accept the minutes of the May 25, 2017 meeting, and was seconded by Jim Schlemmer. All voted in favor.

Specific Board Deliberation Actions:

Mary Pinzone
4729 Mapleton Road
Pendleton, New York

A motion was made by Mr. Daigler to table the deliberation for one month to further examine the property, and was seconded by Mr. Welka. All voted in favor.

Kevin Clark
5427 Oakwood 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 board members felt that the granting of the variance would not create an undesirable change to the neighborhood and nearby properties as the larger addition would be located behind the existing building and the lean-to would be partially blocked by the house.

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

It was agreed that that an alternative solution would be to construct a smaller building or tear down the existing structures to meet town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial.

- 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. Meholick 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. All variance request was granted.

Tom Elberson
5828 Dunnigan 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 create an undesirable change to the neighborhood and nearby properties as the accessory structure would change the character of the empty lot.

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

It was agreed that that an alternative solution would be to apply for permits to construct the house & accessory structure at the same time.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial.

- 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. Buechler to deny the variance as detailed in the request, and was seconded by Mr. Daigler. All voted in favor to deny the variance.

Dale Acker
6555 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 create an undesirable change to the neighborhood and nearby properties as the accessory structure was very large based on the size of the property.

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

It was agreed that that an alternative solution would be to construct a smaller building that met town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial.

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

Don Meyer
5924 Fisk Road
Pendleton, New York

A motion was made by Mr. Meholick to table the deliberation for one month to further examine the property, and was seconded by Mr. Daigler. All voted in favor.

Robert Braunscheidel (Continued from April 2017)
7002 Creekview Drive
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 12 ft. x 20 ft. (240 sq. ft.) addition to an existing 24 ft. x 24 ft. (576 sq. ft.) accessory structure for a total size of 816 sq. ft. where the maximum accessory structure size is 600 sq. ft. per Town Code. The area variance request would be 216 sq. ft. as per Town Code §247-34.E.(1). The property is 0.717 acres and is R-1 low density residential zoning

Mr. Buechler presented to the ZBA members a Partial Release of Easement that was granted to Mr. Braunscheidel by the Town of Pendleton on May 31, 2017. Mr. Braunscheidel also amended the size of the addition to 12 ft. x 20 ft. so the ZBA did not have to add the side yard setback variance to the application.

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 addition would not be noticeable in the back of the accessory structure.

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

It was agreed that that an alternative solution would be to not construct the building addition.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was not substantial.

- 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 revised request above with the condition that the project be completed in one year. The motion was seconded by Mr. Schlemmer. All voted in favor.

Travis Gorman (Continued from May 2017)
5998 Dunnigan Road
SBL No. 151.00-2-34.12
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to sub-divide his property into two lots with frontage of 166.4 ft. for Lot "A" (left lot) and 167 ft. for Lot "B" (right lot) where the minimum frontage allowed is 200 ft. per Town Code. The variance request would be 33.6 ft. for Lot "A" and 33 ft. for Lot "B" as per Town Code §247-14.F. The property is 26.1 acres and is Light Industrial 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 as there are other existing lots in the neighborhood with non-conforming widths.

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

The applicant asserted that there was no alternative that would not require a variance.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was not substantial.

- 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. Meholick to grant the area variance as detailed in the request, and was seconded by Mr. Daigler. All voted in favor.

Wayne Worthington (Continued from May 2017)
7014 Bear Ridge Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 1,440 sq. ft. detached garage on his property where the maximum allowed is 870 sq. ft. per town code (50% of primary residence). The area variance request would be 570 sq. ft. as per Code Section 247-10.I. The size of the property is approximately 1.9 acres and is R-1 low 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 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 build a smaller detached garage to meet Town Code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was not substantial.

- 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. Buechler 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. Daigler. Mr. Buechler, Mr. Daigler & Mr. Schlemmer voted in favor of the variance request; and Mr. Meholick & Mr. Welka voted against the request. All variance request was granted.

**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 several written comments related to the Empire Pipeline variance request were received before the June 16th deadline. Mr. Adam Walters, Esq., of Phillips Lytle LLP, requested that copies of the public comments submitted after the public hearing be sent to his office. The ZBA took his request under advisement.

A motion was made by Mr. Welka to table the deliberation, and was seconded by Mr. Daigler. All voted in favor.

New Inquiries to ZBA: None

Correspondence: None

Special Topics: None

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, July 25, 2017, at 7:00PM.

A motion was made by Lee Daigler to adjourn the meeting at 9:45 PM, and seconded by Dennis Welka. All voted in favor.

Submitted for:

James G. Meholick
Secretary

Attachments: *Available in the Town Clerk's Office*

Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List for Elbersen, Meyer, Clark, Acker & MJ Enterprise
of Niagara County

Town of Pendleton Denial of Building Application for Ms. Mary Pinzone
Town of Pendleton Public Hearing Request for Ms. Mary Pinzone
Town of Pendleton Notice of Public Hearing for Ms. Mary Pinzone

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

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

Town of Pendleton Denial of Building Application for Mr. Dale Acker
Town of Pendleton Public Hearing Request for Mr. Dale Acker
Town of Pendleton Notice of Public Hearing for Mr. Dale Acker
Site Survey of Property for Mr. Dale Acker
Picture of Accessory Structure for Mr. Dale Acker

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

Town of Pendleton Partial Release of Easement for Mr. Robert Braunscheidel