

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
March 22, 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 7:00 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:

Justin Moslow
5754 Dunnigan Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to raise the roof height of an existing accessory structure to 21 ft. where the maximum allowed is 16 ft. per town code. The structure height variance request would be 5 ft. as per Code Section 247-34.F.(2)(d). The size of the property is approximately 5.33 acres and is R-2 medium density residential zoning.

Mr. Moslow presented the Town of Pendleton Building Inspector's denial, and a site survey sketch of the property that illustrated the existing location of the 20 ft. x 24 ft. (480 sq. ft.) accessory structure. He indicated that he was rejuvenating the existing shed and since he didn't have a basement in his house he wanted to add a second floor to the accessory structure for storage. Mr. Moslow stated that a 20 ft. building height would be acceptable. It was noted that there was also an existing 10 ft. x 12 ft. shed on the property and that he did not want to remove this from the property.

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

The formal public hearing was closed at approximately 7:12 PM.

Carrie Marciniak
6743 Aiken Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 24 ft. x 32 ft. (768 sq. ft.) accessory structure where the maximum allowed is 600 sq. ft. per town code. The area variance request would be 168 sq. ft. as per Code Section 247-34.E.(1). The size of the property is approximately 1 acre and is R-1 low density residential zoning.

The Marciniak's were not present at the public hearing. Mr. Buechler stated to the ZBA members that a variance was previously granted for 720 sq. ft. in May of 2014 and that the existing structure was to be torn down.

Mr. Rob Neubauer, who lives on 6763 Aiken Road, was present at the public hearing and was not in favor of the larger accessory structures than was allowed per town code near his home. He felt that the large building proposed would affect the look of the neighborhood as that portion of Aiken Road has the feel of a sub-division. One of his nearby neighbors previously was granted a variance for a larger accessory structure near his property, and he was concerned that if this variance was granted another neighbor would be applying for the same size building, for a total of three large structures in plain sight from his back yard.

Mr. Jai Samra, who lives on 6755 Aiken Road, was present at the public hearing and was in favor of the variance request for the larger accessory structure. He indicated that he would apply for the same variance to build an accessory structure on his property if approved.

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

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

**Salvatore Cantanese (Continuation of December 2015 Public Hearing)
SBL No. 150.01-1-19.1
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new self-storage facility that would contain several small storage units where the use is not permitted by right. The variance request would be to construct the storage facility consisting of many small building as per Code Section 247-12. The size of the property is approximately 5.4 acres and is CO-1 light commercial zoning.

Mr. Buechler indicated to the ZBA members that he was able to contact the realtor representing Mr. Cantanese regarding the variance request, and they needed an additional one month extension before closing the public hearing.

REGULAR ZBA MEETING:

New Inquiries to ZBA: None

Review Minutes from Prior Meeting:

A motion was made by Dennis Welka to accept the minutes of the February 23, 2016 meeting and was seconded by Lee Daigler. All voted in favor.

Specific Board Deliberation Actions:

**Justin Moslow
5754 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 not have an undesirable change to the neighborhood and nearby properties as the size of the property would allow for a larger building footprint and a height of 20 ft. without requiring a variance.

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

It was agreed that the alternative solution would be to build the accessory structure at a height of 16 ft. for a building area less than 600 square feet.

- c. Is the requested variance substantial?

It was agreed that the requested height request was not substantial as compared to the height allowed for a 5+ acre property.

- 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. Buechler to grant an accessory structure height variance of 4 ft. for a maximum total height of 20 feet, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Daigler. All voted in favor.

**Carrie Marciniak
6743 Aiken Road
Pendleton, New York**

A motion was made by Mr. Welka to table deliberation, allowing the ZBA members to visit the property and determine how the larger accessory structure might impact the character of neighborhood. The motion was seconded by Mr. Daigler. All voted in favor.

Correspondence:

1. A letter addressed to Wolfgang Buechler, dated March 1, 2016; was received from Attorney at Law, Mr. Robert Trabucco, regarding the denial of the variance request for Mr. Carleton Zeisz from October 2015. The ZBA members discussed the letter, but no action was taken.
2. A letter was received from Dave Gerber of the Building Inspector's office requesting an interpretation from the ZBA as to whether the fire company is permitted to construct a new building on East Canal Road as a Use Permitted by Special Exception under R2 District Zoning. The ZBA members discussed the request and it was felt that the ZBA could not render an interpretation without an actual appeal filing. Also, based on the definition of Special Exception in section 247-4 of the Town Code, the ZBA noted that the power to make the requested determination resides with the Town Board. Mr. Buechler was going to contact Dave Gerber for further discussion.

Special Topics:

1. Mr. Buechler indicated to the ZBA members that he had written an email to Amy Fisk of the Niagara County Planning Board regarding a renewal of the referral requirements and to date had not yet received a response.

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Tuesday, April 26, 2016, at 7:00PM.

A motion was made by Jim Meholick to adjourn the meeting at 8:40 PM, and seconded by Wolfgang Buechler.

Submitted by:

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 Moslow & Marciniak
Town of Pendleton Denial of Building Application for Mr. Justin Moslow
Town of Pendleton Public Hearing Request for Mr. Justin Moslow
Town of Pendleton Notice of Public Hearing for Mr. Justin Moslow
Site Survey of Proposed Structure on Property for Mr. Justin Moslow
Town of Pendleton Denial of Building Application for Ms. Carrie Marciniak
Town of Pendleton Public Hearing Request for Ms. Carrie Marciniak
Town of Pendleton Notice of Public Hearing for Ms. Carrie Marciniak
Letter from Attorney Robert Trabucco Regarding Zeiss Variance Decision
Planning Board Site Plan Review for East Canal Road Fire House