

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
May 24, 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 7:07 PM. All ZBA members, and The Town Prosecutor, Mr. Ned Perlman, were present at the meeting. No changes to the ZBA agenda submitted by Wolfgang Buechler were made.

PUBLIC HEARINGS:

Shawn Callahan
5529 Tonawanda Creek Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 20 ft. x 35 ft. (700 sq. ft.) detached garage where the maximum allowed is 650 sq. ft. per town code (50% of primary residence). The area variance request would be 50 sq. ft. as per Code Section 247-11.I. The size of the property is approximately 0.75 acres and is R-2 medium density residential zoning.

Mr. Callahan was represented by Kristy Wanat at the public hearing. She presented the Town of Pendleton Building Inspector's denial, and sketches of the ground floor & loft of the proposed garage. Ms. Wanat indicated that the existing garage was in bad shape and was going to be torn down. Also, the house did not have a basement and they needed the building for storage, shop space, and a place to park their cars.

During the public hearing it was determined that the above variance request was more suitable for what Mr. Callahan was trying to achieve on his property. The original variance request was to construct a 700 sq. ft. accessory structure at a height of 20 feet.

The formal public hearing was closed at approximately 7:17 PM.

Mike Schmit
Fisk Road near Transit 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 150 ft. pond with a side setback of 69.5 ft. on each side of property (189 ft. wide property) where minimum required is 100 ft. per Town Code §247-46.A.(1) Area variance sought is 30.5 ft. side yard setback variance per side. Property is 5 acres and is zoned R2 Medium-density Residential.

Mr. Schmit was not present at the public hearing.

Mr. Joseph Corto, who was the previous owner of the property for 45 years, was present at the public hearing and was not in favor of the pond. Mr. Corto indicated that before he sold the property to Mr. Schmit he was made aware of the restrictions on the property that included no pole barns & ponds. The area was to be kept serene and the intent was to build larger homes on the properties. He was concerned that the pond would cause mosquito issues, depreciate the property values, flood the area during heavy periods of rain, and he would need to add pesticides that would potentially spill to other properties. In addition, there are a lot of young children in the area and he was worried about their safety.

The formal public hearing was closed at approximately 7:30 PM.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Dennis Welka to accept the minutes of the March 22, 2016 meeting and was seconded by Jim Schlemmer. All voted in favor.

Specific Board Deliberation Actions:

**Shawn Callahan
5529 Tonawanda Creek 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.

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

It was agreed that the alternative solution would be to construct a smaller detached garage that was half the size of the house.

- c. Is the requested variance substantial?

It was agreed that the requested area variance was not 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.

A motion was made by Mr. Schlemmer to approve the variance as detailed in the request on condition that the existing garage be torn down by final inspection, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Welka. All voted in favor.

Mike Schmit
Fisk Road near Transit 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 and would be contrary to the intent of the Code's 100 ft. setback requirement.

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

It was agreed that the dimensions of the property would not support a pond that was compliant with Town Code.

- c. Is the requested variance substantial?

It was agreed that the requested side yard setback 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 could possibly have an adverse effect on the physical or environmental conditions in the neighborhood, including a potential safety issue.

- 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. Buchler to deny the requested variance for side setback. The motion was seconded by Mr. Meholick. All voted in favor.

**Carrie Marciniak (Continuation of March 2016 Public Hearing)
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 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?

Several of the board members felt that the granting of the variance would not create an undesirable change to the neighborhood and nearby properties. The ZBA had granted an area variance of 720 sq. ft. previously, and a similar variance was granted to the property to the left of the Marciniak's. It was pointed out by Mr. Welka that their neighbor, Mr. Neubauer, had several negative comments about the requested size of the accessory structure.

- 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 compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance was substantial as it 20% greater than 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 could possibly have an adverse effect on the physical or environmental conditions in the neighborhood as it could impact the visual view of the neighbor's back yards.

- 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 area variance for a maximum of 720 sq. ft. with a maximum height of 16 ft., and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Schlemmer. Mr. Buecher, Mr. Daigler, Mr. Schlemmer & Mr. Meholick voted in favor of the motion; and Mr. Welka voted against. The motion was carried.

**Chris Alex (Continuation of April 2016 Public Hearing)
4932 Devonshire Lane
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct an 830 sq. ft. accessory structure where the maximum size allowed is 600 sq. ft. per town code, at a height of 20 ft. where the maximum allowed is 16 ft. per town code, and at a front yard setback of 92.7 ft. where the minimum front yard setback required is 150 ft. per town code. The area variance request would be 230 sq. ft. as per Code Section 247-34E.(1), the height variance request would be 4 ft. as per Code Section 247-34.F.(2).(d), and the front yard variance request would be 57.4 ft. as per Code Section 247-34.F.(2).(a). The size of the property is approximately 0.50 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 front setback, size, and height of the building on the small lot size.

- 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 compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the requested area and front setback variance requests were 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 could possibly 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 deny the requested variance for area, height & front yard setback. The motion was seconded by Mr. Schlemmer. All voted in favor.

Todd Hopkins (Continuation of April 2016 Public Hearing)
6147 Aiken Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct an agricultural building at a side yard setback of 55 ft. where the minimum required is 100 ft. per town code. The side yard variance request would be 45 ft. as per Code Section 247-40.A. The size of the property is approximately 24 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 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 the alternate solution would be to rotate the building or move to a location compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was approximately 50% greater than 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. Buechler to approve the variance as detailed in the request conditional with no time limit on completion of the proposed project. The motion was seconded by Mr. Daigler. All voted in favor.

**Charles Dimaria (Continuation of April 2016 Public Hearing)
4188 Tonawanda Creek Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 36 ft. x 44 ft. (1,584 sq. ft.) accessory structure where the maximum size allowed is 600 sq. ft. per town code, at a height of 18 ft. where the maximum allowed is 16 ft. per town code, and at a side yard setback of 10 ft. where the minimum side yard setback required is 15 ft. per town code. The area variance request would be 984 sq. ft. as per Code Section 247-34.E.(1), the height variance request would be 2 ft. as per Code Section 247-34.F.(2).(d), and the side yard variance request would be 5 ft. as per Code Section 247-34.F.(2).(b). The size of the property is approximately 1.6 acres and is R-1 low density residential zoning.

It was also noted at the meeting that there was an existing 10 ft. x 12 ft. (120 sq. ft.) shed on the property that Mr. Dimaria did not want to remove from the property.

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. The accessory structure proposed was large for the area as the largest building in the area was 1,200 sq. ft. with a 16 ft. height.

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

It was agreed that the alternate solution would be to construct a smaller building compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the requested area variance request was substantial as it was approximately 300% greater than town code and also large with respect to the size of the residence. The side yard setback request was also substantial as it was 50% greater than 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 have a physical adverse effect due to size in the neighborhood. The ZBA members were not sure if the accessory structure would have an environmental effect.

- 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. Welka to deny the requested variance for area, height & side yard setback. The motion was seconded by Mr. Daigler. Mr. Welka Mr. Daigler & Mr. Schlemmer voted in favor of the motion; and Mr. Meholick & Mr. Buechler voted against. The motion to deny the variance request was carried.

**Jai Samra (Continuation of April 2016 Public Hearing)
6755 Aiken Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a 777 sq. ft. accessory structure where the maximum allowed is 600 sq. ft. per town code. The area variance request would be 177 sq. ft. as per Code Section 247-34.E.(1). The size of the property is approximately 0.75 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 create an undesirable change to the neighborhood and nearby properties. The accessory structure proposed was detrimental based on the size of the building as opposed to the property size.

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

It was agreed that the alternate solution would be to construct a smaller building compliant with town code.

- c. Is the requested variance substantial?

It was agreed that the requested area variance request was substantial as it was approximately 30% greater than 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. Welka to deny the requested variance for area, and was seconded by Mr. Meholick. All voted in favor.

Correspondence: None

Special Topics: None

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Monday, June 27, 2016, at 7:00PM.

A motion was made by Jim Meholick to adjourn the meeting at 9:00 PM, and seconded by Dennis Welka.

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 Callahan & Schmit
Town of Pendleton Denial of Building Application for Mr. Shawn Callahan
Town of Pendleton Public Hearing Request for Mr. Shawn Callahan
Town of Pendleton Notice of Public Hearing for Mr. Shawn Callahan
Sketch of Detached Garage for Mr. Shawn Callahan
Town of Pendleton Denial of Building Application for Mr. Mike Schmit
Town of Pendleton Public Hearing Request for Mr. Mike Schmit
Town of Pendleton Notice of Public Hearing for Mr. Mike Schmit