

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
May 23, 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, 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:

Steven Flay
4933 Mapleton Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to place a pre-constructed 12 ft. x 20 ft. (240 sq. ft.) accessory structure on an old garage concrete pad with a side lot setback of 6.65 ft. where the minimum allowed is 15 ft. per Town Code. The variance request would be 8.35 ft. as per Town Code §247-34.F(2)(6). The property is 1.15 acres and is R-2 medium density residential zoning.

Mr. Flay presented the Town of Pendleton Building Inspector's denial, a site survey with the accessory structure location on the property, and a photograph of the proposed building. Mr. Flay indicated that the concrete pad was removed with the accessory structure and he would remove the existing 10 ft. x 8 ft. metal shed. He also requested that the variance be amended to locate the shed at a side yard setback of 10 feet as he wanted the accessory structure to be no closer than 10 to 15 ft. from his leach bed.

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

The public hearing was closed at approximately 7:10 PM.

Travis Gorman
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.

Mr. Gorman presented the Town of Pendleton Building Inspector’s denial, and a site survey of the property illustrating the sub-divided lots. Mr. Gorman indicated that he wanted to split the property so Lot “B” could be utilized for a separate use.

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

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

Wayne Worthington
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.

Mr. Gorman presented the Town of Pendleton Building Inspector’s denial, and a site survey of the property illustrating the location of the detached garage. Mr. Worthington indicated that the detached garage would be located approximately 30 ft. behind the existing accessory structure.

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

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

John Winstel
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, presented the Town of Pendleton Building Inspector's denial; minutes related to the property from the Board of Appeals meeting on April 3, 1989; and previous application for Laser Bonding Tech International from the ZBA meeting on December 22, 2015. Mr. Winstel indicated that the perspective buyer would like to use the property for his small general contracting business with six employees, and specializes in exterior renovations & property maintenance. Traffic would be low and hours of operation would primarily be between 7:00AM to 5:00PM.

A letter was received from Terry Pienta, that she received a telephone call from Ed McDonald requesting that the Board postpone the decision for the public hearing as several neighbors were unable to attend and would like their voices to be heard.

Mr. Dave Leible was present at the meeting and concerned about outside storage of materials that could potentially be blown around by the wind, and questioned whether the business would be residential friendly.

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

The board discussed with Mr. Winstel the possibility of having the potential owner present at the next meeting to discuss his plans for the property.

A motion was made by Mr. Welka at approximately 8:10PM to continue the hearing to the next public hearing on June 27, and was seconded by Mr. Schlemmer. All voted in favor.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

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

Specific Board Deliberation Actions:

Steven Flay
4933 Mapleton 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 at the 10 ft. side yard setback and would have a minimal visual impact to the neighborhood.

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

It was agreed that that an alternative solution would be to move the building to a location that meets 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. Welka to grant the amended 5 ft. side yard setback variance request, and with the condition that the project be completed in one year. The motion was seconded by Mr. Schlemmer. Mr. Buechler, Mr. Welka & Mr. Schlemmer voted in favor of the variance request, and Mr. Meholick & Mr. Daigler voted against the request. The variance was granted.

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 10 ft. x 24 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 indicated to the ZBA members that the 1986 easement in the back of his property of 25 ft. was not in the town property records. However, the easement was filed with the deed and discovered during a past title search of the property. The structure was also located at a side yard setback of 13.65 feet so an additional variance request for 1.35 ft. was required.

The board recommended to Mr. Braunscheidel that he consider requesting the town board to relax the easement. A motion was made by Mr. Schlemmer to table the deliberation for one month, and was seconded by Mr. Meholick. All voted in favor.

**Travis Gorman
5998 Dunnigan Road
SBL No. 151.00-2-34.12
Pendleton, New York**

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

**Wayne Worthington
7014 Bear Ridge Road
Pendleton, New York**

A motion was made by Mr. Meholick to table the deliberation for one month so that the board could clarify some of the denial parameters with the town building inspector, and was seconded by Mr. Welka. All voted in favor.

**Robert & Suzanne Brauer (Continued from April Public Hearing)
(Sean Hopkins as Representative)
The Meadows Subdivision
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a new 51 lot subdivision called “The Meadows” that requires depth & area variances on several lots as per Town Code Sections §247-11.C.(1) & §247-11.C.(5). The property is 53.2 acres and is R-2 medium density residential zoning.

Mr. Hopkins presented the following list of depth & area variance requests by lot:

Lot Depth Variance Descriptions:

Lots 1 & 2 Depth Variance of 82 feet. Lot depth is 168 ft. where a minimum of 250 ft. is required. Due to wetland boundary a 82 ft. depth variance is required as per Town Code Section §247-11.C.(1).

Lot 3 Depth Variance of 70 feet. Lot depth is 180 ft. where a minimum of 250 ft. is required. Due to wetland boundary a 70 ft. depth variance is required as per Town Code Section §247-11.C.(1).

- Lots 4 - 16 Depth Variance of 75 feet. Lot depth is 175 ft. where a minimum of 250 ft. is required. Due to storm water detention basin a 75 ft. depth variance is required as per Town Code Section §247-11.C.(1).
- Lots 25 & 26 Depth Variance of 33 feet. Variance is only required for right property line as the lot area requirement is already being satisfied. Right property line is 217 ft. where a minimum of 250 ft. is required as per Town Code Section §247-11.C.(1).
- Lots 45 - 47 Depth Variance of 10 feet. Lot depth is 240 ft. where a minimum of 250 ft. is required. Due to drainage easement a 10 ft. depth variance is required as per Town Code Section §247-11.C.(1).
- Lot 48 Depth Variance of 10 feet. Lot depth is 240 ft. where a minimum of 250 ft. is required. Due to drainage easement a 10 ft. depth variance is required as per Town Code Section §247-11.C.(1).
- Lots 49 & 50 Depth Variance of 68 feet. Lot depth is 182 ft. where a minimum of 250 ft. is required. Due to drainage easement a 68 ft. depth variance is required as per Town Code Section §247-11.C.(1).

Lot Area Variance Descriptions:

- Lot 2 Area Variance of 7,648 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).
- Lot 3 Area Variance of 6,000 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).
- Lot 4 Area Variance of 7,416 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).
- Lots 5 - 15 Area Variance of 7,500 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).
- Lot 16 Area Variance of 7,413 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).

- Lots 46 - 47 Area Variance of 760 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).
- Lot 48 Area Variance of 6,742 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).
- Lot 49 Area Variance of 3,074 square feet. As per Town Code Section §247-11.C.(1), 25,000 sq. ft. is the required lot area per parcel. Due to wetlands, wetland buffer areas, ponds (retention or detention) and/or easements, this lot is requiring a Lot area variance. Affected Town Codes: §247-1C(1) & §247-11C(3).

The ZBA board reviewed the Area Variance tests, and determined that the tests would be the same for all depth & area variances that were requested 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, and would not have a detrimental visual impact to the neighborhood. The board concluded that the development would define its own neighborhood.

- 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.

The ZBA board then reviewed the variance tests for depth, and commented as follows:

Depth Variance Tests for Lots 1, 2 & 3:

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

It was agreed that an alternative solution would be to have homes only on one side of the street which was considered impractical, and potentially no alternative due to the wetlands to the north of the property.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was 33% greater than the town code allowed.

A motion was made by Mr. Meholick to grant the depth variance request, and was seconded by Mr. Schlemmer. All voted in favor.

Depth Variance Tests for Lots 4 to 16:

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

It was agreed that there was no alternative solution that would not require a variance due to the wetlands to the north of the property.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was 30% greater than the town code allowed.

A motion was made by Mr. Schlemmer to grant the depth variance request, and was seconded by Mr. Meholick. All voted in favor.

Depth Variance Tests for Lots 25 & 26:

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

It was agreed that there was no alternative solution that would not require a variance as the cul-de-sac lot was locked in dimensionally due to the wetlands.

- c. Is the requested variance substantial?

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

A motion was made by Mr. Meholick to grant the depth variance request, and was seconded by Mr. Welka. All voted in favor.

Depth Variance Tests for Lots 46 & 47:

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

It was agreed that an alternative solution would be to not cede property to the existing neighbor at 6643 Campbell Blvd.

- c. Is the requested variance substantial?

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

A motion was made by Mr. Welka to grant the depth variance request, and was seconded by Mr. Schlemmer. All voted in favor.

Depth Variance Tests for Lot 48:

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

It was agreed that an alternative solution would be to not cede property to the existing neighbor at 6643 Campbell Blvd.

- c. Is the requested variance substantial?

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

A motion was made by Mr. Welka to grant the depth variance request, and was seconded by Mr. Schlemmer. All voted in favor.

Depth Variance Tests for Lots 49 & 50:

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

It was agreed that an alternative solution would be to not cede property to the existing neighbor at 6635 Campbell Blvd.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was 30% greater than the town code allowed.

A motion was made by Mr. Welka to grant the depth variance request, and was seconded by Mr. Meholick. All voted in favor.

The ZBA board then reviewed the variance tests for area, and commented as follows:

Area Variance Tests for Lot 2 & 3:

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

It was agreed that an alternative solution would be to have fewer, wider lots to meet town code. Wider lots were not considered to be desirable by the developer.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was 30% greater than the town code allowed.

A motion was made by Mr. Welka to grant the area variance request, and was seconded by Mr. Buechler. All voted in favor.

Area Variance Tests for Lots 4 to 16:

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

It was agreed that an alternative solution would be to have four fewer, 142 ft. wide lots to meet town code. Wider lots were not considered to be desirable by the developer.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was 30% greater than the town code allowed.

A motion was made by Mr. Meholick to grant the depth variance request, and was seconded by Mr. Schlemmer. Mr. Meholick, Mr. Buechler, Mr. Schlemmer & Mr. Daigle voted in favor of granting the variance request; and Mr. Welka voted against the request. The variance was granted.

Area Variance Tests for Lots 46 & 47:

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

It was agreed that an alternative solution would be to have fewer, wider lots to meet town code due to the wetlands, wetland buffer area, ponds & easements.

- c. Is the requested variance substantial?

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

A motion was made by Mr. Buechler to grant the area variance request, and was seconded by Mr. Schlemmer. All voted in favor.

Area Variance Tests for Lot 48:

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

It was agreed that an alternative solution would be to have fewer, wider lots to meet town code due to the wetlands, wetland buffer area, ponds & easements.

- c. Is the requested variance substantial?

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

A motion was made by Mr. Buechler to grant the area variance request, and was seconded by Mr. Welka. All voted in favor.

Area Variance Tests for Lot 49:

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

It was agreed that an alternative solution would be to have fewer, wider lots to meet town code due to the wetlands, wetland buffer area, ponds & easements.

- c. Is the requested variance substantial?

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

A motion was made by Mr. Buechler to grant the area variance request, and was seconded by Mr. Welka. 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, June 27, 2017, at 7:00PM.

A motion was made by Dennis Welka to adjourn the meeting at 10:45 PM, and seconded by Wolf Buechler.

Submitted for:

James G. Meholick
Secretary

Attachments: Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List for Flay, Gorman, Worthington & Winstel

Town of Pendleton Denial of Building Application for Mr. Steven Flay
Town of Pendleton Public Hearing Request for Mr. Steven Flay
Town of Pendleton Notice of Public Hearing for Mr. Steven Flay
Site Surveys of Property for Mr. Steven Flay
Picture of Proposed Accessory Structure for Mr. Steven Flay

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

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

Town of Pendleton Denial of Building Application for Mr. John Winstel
Town of Pendleton Public Hearing Request for Mr. John Winstel
Town of Pendleton Notice of Public Hearing for Mr. John Winstel
Letter from Terry Pienta Related to Public Hearing for Mr. John Winstel
E-mail to Tim Masters Related to Public Hearing for Mr. John Winstel
Recap of ZBA Meeting in 1989 Related to Public Hearing for Mr. John Winstel
December 2015 Application Related to Public Hearing for Mr. John Winstel

Town of Pendleton Denial of Building Application for Mr. Robert Brauer
Town of Pendleton Public Hearing Request for Mr. Robert Brauer
The Meadows at Pendleton North Subdivision Depth & Area Variance List by Lot
Letter to John Lavrich for The Meadows at Pendleton North Subdivision