

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
November 25, 2014 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. 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:

Lauren Molloy
East Canal Road SBL No. 151.00-1-53.1
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new single family home with a front yard setback of 500 ft. where the maximum allowed is 250 ft. per town code. The front yard variance request would be 250 ft. as per Code Section 247-11.D.(3). The size of the property is approximately 44.7 acres and is R-2 medium density residential zoning.

Ms. Molloy indicated that she wanted to construct a new single family home further back in the property due to several constraints with the property. From East Canal Road the property dips down and then rises back up where it is level at 400 feet from the road. At a distance of 500 ft. there is a cleared area which is the preferred location to build the house. There is also a tree line at 250 ft. from the road and if they built the house at this distance they would be looking into the back yard of the neighbor. She plans to add solar panels to the house and stated that a distance of 100 ft. from the tree line was required for optimal performance of the panels. It was noted that the 30 acres of property to the south was owned by the state. She also presented a site survey of the property that illustrated approximately where the building would be located, and two aerial photographs of the property.

All ZBA members stated that they had attempted to drive by or visit the property, but were not sure of the exact location of the property. Board Members stated that they would like to go back and review the site in the context of the detailed request. Ms. Molloy gave permission to bypass the chained entrance to the property.

A motion was made by Mr. Daigler to table the public hearing to be able to visit the property, and was seconded by Mr. Welka. All voted in favor.

The formal public hearing was tabled at approximately 7:20 PM.

Jerry Gradl / Kirk Rutherford
7007 Campbell Boulevard
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 24 ft. x 80 ft. (1,920 sq. ft.) addition on the east side of the property with a side yard setback of 49.61 ft. where the minimum allowed is 100 ft. as per town code. The side yard variance request would be 50.39 ft. as per Code Section 247-12.11(1). The size of the property is approximately 2.4 acres and is CO-1 light commercial zoning.

Mr. Gradl & Mr. Rutherford presented the Town of Pendleton Public Hearing Request to Petition for a Variance Form to Mr. Buechler. Mr. Buechler requested to see a copy of the building inspector's denial letter for the above request, but they indicated that they were never given this letter. Mr. Buechler explained that the Board of Appeals could not consider the variance request without an actual denial from a Town official. He instructed them to meet with the building inspector to obtain a denial letter and explained what information they should bring to the next public hearing.

Mr. Gradl & Mr. Rutherford left the meeting at approximately 7:30 PM.

Andrew Forrestel
7180 Creekbend Drive
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 12 ft. x 12 ft. (144 sq. ft.) accessory structure with a side yard setback of 3 ft. where the minimum allowed is 15 ft. as per town code, and a 73 ft. front yard setback where a minimum of 150 ft. is required as per town code. The side yard variance request would be 12 ft. and the front yard variance request would be 77 ft. as per Code Section 247-11.A(5) to 247-34.F.(2)(A)&(B). The size of the property is approximately 0.5 acres and is R-2 medium density residential zoning.

Mr. Forrestel presented the Town of Pendleton Public Hearing Request to Petition for a Variance Form to Mr. Buechler. Mr. Buechler requested to see a copy of the building inspector's denial for the above request, but Mr. Forrestel indicated he was never given a written denial. Mr. Buechler explained that the Board of Appeals could not consider the variance request without an actual denial from a Town official. He instructed him to meet with the building inspector to obtain a denial letter and explained what information he should bring to the next public hearing.

Mr. Forrestel left the meeting at approximately 7:40 PM.

**Allen Richards
6073 Townline Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to appeal a stop work order issued on October 15, 2014, for the Building Permit No. 38-53 issued on September 12, 2014. The size of the property is approximately 6.48 acres and is R-2 medium density residential zoning.

Mr. Richard's attorney, Mr. John Ottanano, was present at the meeting to represent the interests of the Richards. Mr. Ottanano reviewed the circumstances of the purchase of the Richard's property from Mr. Douglas Clark in August of 2013; the conditions imposed on the prior landowner when the Planning Board of the Town of Pendleton approved a conditional sub-division plan; the expiration of the conditional sub-division approval in early 2015; and the circumstances leading up to the issuance of the Stop Work Order on October 15, 2014. He asserted that the Richards purchased a legal lot that had been duly filed with the Niagara County Clerk and that they should not be subject to a stop work order on the basis of the conditions contained in the sub-division approval. Mr. Ottanano asserted that those conditions were placed by the Town's Planning Board on Mr. Clark and not on the lot which the Richards purchased.

Mr. Ottanano requested an interpretation from the Board with regards to the Stop Work Order on the Town's claim that the Richard's lot was the result of an illegal subdivision.

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

A motion was made by Mr. Meholick that the ZBA determine the lot was legal at the time of purchase in August 2013, and therefore that both the Stop Work Order of October 15, 2014, should be lifted and the Building Permit 3853 reinstated. The motion was seconded by Mr. Welka. Mr. Meholick, Mr. Buechler, Mr. Welka, and Mr. Schlemmer voted in favor of the motion, and Mr. Daigler voted against the motion.

The formal public hearing was closed at approximately 8:00 PM.

**Douglas Clark (Continuation of October 28th Public Hearing)
SBL No. 135.00-1-47.1
6073 Townline Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to keep a customary farm and/or agricultural building on a lot less than 7 acres as per Town Code Section 247-11.J.(1). The variance sought would be the equivalent of approx. 2.4 acres to allow the existing customary farm and/or agricultural buildings to stay on the property which is under 7 acres. The size of the property is approximately 4.6 acres and is R-2 medium density residential zoning.

Mr. Clark was before the ZBA in order to obtain a variance to keep the existing barn on the lot that he recently sub-divided that is less than 7 acres. In order to receive approval from the Planning Board for sub-dividing the 10.7 acre property, he had previously agreed to remove the barn. Mr. Clark indicated that the barn has been used for agricultural purposes for many years by Mr. Wasik who farms the property for hay and stores equipment, tools and sometimes hay in the barn. Mr. Clark also felt that the barn, originally built circa 1830, had historical significance to the Town of Pendleton and should not be torn down.

Mr. Daigler who had visited the property indicated that, for its age, the main barn from the outside was in excellent condition and the foundation was in good shape. Mr. Buechler had also visited the property and stated that the inside of the barn had a raised floor with loft and that it was dry. He confirmed that the barn was currently being used for storage of tools, a tractor, a mower, and other farming equipment.

Several of Mr. Clark's neighbors were present at the meeting to offer support for his variance request.

Mr. Jack Belstadt who lives across the street on 6046 Townline Road, indicated that he had lived in his home for 15 years and considered the barn a landmark. He was okay with keeping the barn and was in support of Mr. Clark's variance request. Marie Caputi, who lives at the same address, was in agreement with Mr. Belstadt's comments.

Mr. Gerald Krantz, who lives south of the property on 6176 Townline Road which is 1/4 mile away on the other side of the road, was in agreement that the barn should not be torn down and he considered it a landmark.

Mr. Henry Failing of 6990 Errick Road was in agreement that the barn should not be torn down.

Jody & Charles Foley of 6031 Townline Road felt the barn was in good shape and were okay with keeping the barn. They also felt that the barn was a symbol of farming in Pendleton and that causing its removal would be inconsistent with Pendleton's character.

Mr. Ed Harmon of 4234 Lockport Road was in agreement that the barn should not be torn down.

Mr. Mark Serrienne of 6034 Townline Road has lived in the area for 30 years and was also in agreement that the barn should not be torn down as it was in good shape.

Mr. Ottanano expressed that the Richards of 6073 Townline Rd. had no opinion either way on the status of the barn.

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

The formal public hearing was closed at approximately 8:35 PM.

REGULAR ZBA MEETING:

New Inquiries to ZBA: None

Review Minutes from Prior Meeting:

A motion was made by Jim Schlemmer to accept the minutes of the October 28, 2014 meeting and was seconded by Dennis Welka. All voted in favor.

Specific Board Deliberation Actions:

**Douglas Clark
SBL No. 135.00-1-47.1
6073 Townline 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, and that the barn was part of the existing character of the neighborhood.

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

It was agreed that an alternative solution would be to tear down the barn or purchase more land to bring the property in compliance with code.

- c. Is the requested variance substantial?

It was agreed that the requested 2.4 acre property size variance 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 would not have an adverse effect on the physical or environmental conditions in the neighborhood as no change to existing structures is requested in the variance.

- 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 approve the variance as detailed in the request, and was seconded by Mr. Buechler. Mr. Meholick, Mr. Daigler & Mr. Meholick voted in favor of the motion; and Mr. Schlemmer & Mr. Welka voted against. The variance was granted with respect to the existing farm and/or agricultural buildings as requested.

Correspondence: *None*

Special Topics: *None*

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Tuesday, December 23, 2014, at 7:00PM.

A motion was made by Jim Schlemmer to adjourn the meeting at 9:20 PM, and seconded by Wolf Buechler.

Submitted by:

James G. Meholick
Secretary

Attachments: AVAILABLE at the Town Clerk's Office
Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List for Gradl, Forrestel & Richards
Public Hearing Mailing List for Ms. Lauren Molloy
Town of Pendleton Notice of Public Hearing for Ms. Lauren Molloy
Town of Pendleton Public Hearing Request from Ms. Lauren Molloy
Site Survey of Property for Ms. Lauren Molloy
Aerial Photograph #1 of Property for Ms. Lauren Molloy
Aerial Photograph #2 of Property for Ms. Lauren Molloy
Town of Pendleton Notice of Public Hearing for Mr. Gradl & Mr. Rutherford
Town of Pendleton Public Hearing Request from Mr. Gradl & Mr. Rutherford
Town of Pendleton Notice of Public Hearing for Mr. Andrew Forrestel
Town of Pendleton Public Hearing Request from Mr. Andrew Forrestel
Site Survey of Property for Mr. Andrew Forrestel
Town of Pendleton Notice of Public Hearing for Mr. Allen Richards
Town of Pendleton Article X Petition for Mr. Allen Richards