

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
October 28, 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 7:05 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:

Todd Sicard
6023 Tonawanda Creek Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 40 ft. x 60 ft. (2,400 sq. ft.) pole barn behind and attached to an existing barn where Town Code Section 247.40.A requires a 100 ft. side yard setback from any lot line and 250 ft. front yard setback from the street. The variances sought are an 81 ft. front yard setback, 68 ft. east side yard setback, and a 4 ft. west side yard setback. The size of the property is approximately 3.8 acres and is R-1 low density residential zoning.

Mr. Sicard indicated that he wanted to construct a new pole barn for his dairy farm to provide storage for his barrels & equipment. He also presented a site survey of the property that illustrated where the building would be located. Mr. Sicard amended his original variance request at the public hearing of a 58 ft. east side lot and 14 ft. west side lot variance request to the above setbacks so his cows would not have to pass through the new pole barn to be milked.

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

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

Diane Wasik
6389 Townline Road
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 30 ft. (720 sq. ft.) detached garage with a 12 ft. x 20 ft. patio (240 sq. ft.) for a total area of 960 sq. ft., and a front yard setback of 93 ft. where the minimum allowed is 100 ft. as per town code. The existing home on the property is 800 sq. ft. and the detached garage cannot be larger than 50% of the house per town code. The area variance request would be 560 sq. ft. as per Code Section 247-11.I, and the front yard variance request would be 7 ft. as per Code Section 247-11.D.(1). The size of the property is approximately 3.3 acres and is R-2 medium density residential zoning.

Ms. Wasik indicated that the detached garage could not be located further back in the property as there was an existing septic system. She also presented a site survey of the property that illustrated where the building would be located

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

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

Michael Zimmerman
7277 Lakeview Court
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton for an existing 12 ft. x 12 ft. (144 sq. ft.) accessory structure with a side yard setback of 11.5 ft. where the minimum allowed is 15 ft. as per town code. The side yard variance request would be 3.5 ft. as per Code Section 247-34.F.(2)(6). The size of the property is approximately 0.57 acres and is R-2 medium density residential zoning.

Ms. Zimmerman indicated that the accessory structure was built without a permit and that he had located the building closer to the side of his property due to the slope of his property. He also presented an aerial view of his property that showed where the structure was currently located, and photographs of the existing building in relation to his property.

Mr. Zimmerman's neighbor located in the back of his property, Mr. Tom Sieczkarek, was okay with the location of the building.

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

The formal public hearing was adjourned at approximately 7:40 PM.

Douglas Clark
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 to allow the building 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 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. He agreed that he had initially agreed to tear down the barn to expedite the sale of the property but had second thoughts after being made aware of Ag and Markets considerations.

Mr. Clark's attorney, Mr. Rob Ratajczak, was present at the meeting. He indicated that under the right to farm code that Mr. Clark should be able to keep the barn as Mr. Wasik who farms the land owns several parcels of land that exceeded the minimum required to have a barn. Mr. Ratajczak reviewed the history of the property and the reasons why the barn should remain on the property.

Mr. Clark's neighbor, Mr. Gerald Krantz, who lives south of the property on 6176 Townline Road, was in agreement that the barn should not be torn down.

Alan & Kimberly Richards who purchased 6.1 acres of the sub-divided property were present at the meeting. Since the subdivision was considered illegal by the Town Planning Board due to the failure to remove of the barn, the Richards were issued a stop work order by Pendleton on pool construction in their backyard. The Richards indicated that Mr. Clark did not need to sell the property right away, that the barn teardown was promised as part of the sale, and that only one half of the property is farmed. They would prefer that the structure be torn down.

Mr. Clark stated that the teardown of the barn was not part of his sale agreement with the Richards which preceded the conditional subdivision approval by the Town Planning Board.

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

A motion was made by Mr. Meholick to table the public hearing to find out more information on the property & the right-to-farm law, and was seconded by Mr. Buechler. Mr. Meholick, Mr. Daigler & Mr. Meholick voted in favor of tabling the public hearing; and Mr. Schlemmer & Mr. Welka voted against. Tabling of the public hearing passed.

The formal public hearing was tabled at approximately 8:07 PM.

David Krebs (Continuation of September 22nd Public Hearing)
6670 Aiken Road
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 30 ft. (360 sq. ft.) accessory structure to replace an existing 10 ft. x 12 ft. accessory structure with a front yard setback of 74 ft. where the minimum allowed is 150 ft. per town code. The area variance request would be 76 ft. as per Code Section 247-11.A(5) to 247-34. The size of the property is approximately 0.75 acres and is R-2 medium density residential zoning.

Mr. Buechler advised the ZBA members that nothing was on record for the original permit to construct the existing accessory structure and that it was built non-conforming. It was also indicated that many accessory structures on the road are within 150 ft. from the road and that if built further back Mr. Krebs would have to remove some rear yard fencing.

The formal public hearing was adjourned at approximately 8:20 PM.

Ivan Yatchuk (Continuation of September 22nd Public Hearing)
6056 Campbell Boulevard
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning Ordinance of the Town of Pendleton to construct a new 20 ft. x 9 ft. (180 sq. ft.) shed roof extension to an existing 600 sq. ft. accessory structure for a total area of 780 sq. ft. where the maximum allowed is 600 sq. ft. per town code. The area variance request would be 180 sq. ft. as per Code Section 247-34.E.(1). The size of the property is approximately 1.14 acres and is R-2 medium density residential zoning.

Mr. Buechler indicated that the Code Enforcement Officer, Mr. Jack Striegel, visited the property and measured the structures current on Mr. Yatchuk's property. It was determined that the existing accessory structure was actually 43 ft. x 32 ft. (1,376 sq. ft.) with the shed roofs, and that there was a second 16 ft. x 18 ft. (288 sq. ft.) accessory structure that was built without a permit with a wood floor on a stone base. Mr. Yatchuk had indicated to Mr. Striegel that he would tear down the second structure but requested the ZBA to consider a variance for the area of both structures.

The total area for both structures was revised to 1,664 square feet, and the variance request was amended to 1,064 square feet.

The formal public hearing was adjourned at approximately 8:30 PM.

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 September 22, 2014 meeting and was seconded by Jim Schlemmer. All voted in favor.

Specific Board Deliberation Actions:

**Todd Sicard
6023 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 have an undesirable change to the neighborhood and nearby properties, and was consistent with the buildings in the neighborhood. Specifically, the board noted Mr. Sicard's existing non-conforming agricultural structures.

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

It was agreed that there were no practical alternate solutions that would not require a variance to meet town code. Specifically, compliance with the 100 ft. side setback requirement was not possible in the immediate vicinity of his existing structures.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial on the east & front sides of the 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.

After discussion, Mr. Meholick made a motion to grant the variance for the project detailed in the application, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Schlemmer. All voted in favor.

Diane Wasik
6389 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 was consistent with the buildings in the neighborhood.

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

It was agreed that an alternative solution would be to construct a smaller garage, but she could not move the garage further back on the property due to the existing septic system.

- c. Is the requested variance substantial?

It was agreed that the building size variance request 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.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

After discussion, Mr. Welka made a motion to grant the variance for the project detailed in the application, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Schlemmer. All voted in favor.

Michael Zimmerman
7277 Lakeview Court
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 was borderline detrimental to the neighborhood and nearby properties in the neighborhood.

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

It was agreed that an alternative solution would be to move the accessory structure 3.5 ft. to meet town code.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial as it was 30% of 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.

After discussion, Mr. Schlemmer made a motion to grant the variance for the project detailed in the application, and was seconded by Mr. Buechler. Mr. Schlemmer voted in favor to grant the variance request; and Mr. Meholick, Mr. Buechler, Mr. Daigler & Mr. Welka voted against granting the variance request. The variance request was denied.

David Krebs
6670 Aiken 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 was not detrimental to the neighborhood and nearby properties in the neighborhood.

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

It was agreed that the alternative solutions would be to tear down the fence or not build the accessory structure.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial as it was 50% of 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.

After discussion, Mr. Daigler made a motion to grant the variance for the project detailed in the application, and to impose a one year time limit on completion of the proposed project. The motion was seconded by Mr. Meholick. Mr. Schlemmer, Mr. Meholick, Mr. Buechler & Mr. Daigler voted in favor of the motion to grant the variance; and Mr. Welka voted against the motion. The variance request was passed.

Ivan Yatchuk
6056 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 be detrimental to the neighborhood and nearby properties in the neighborhood.

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

It was agreed that the alternative solutions would be to tear down and revise the accessory structures to meet town code.

- c. Is the requested variance substantial?

It was agreed that the variance request 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.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created. Specifically, the board noted that the roof extensions and the smaller accessory structure were built without permit.

After discussion, Mr. Schlemmer made a motion to deny the variance for the project detailed in the application including the shed roofs & second structure, and was seconded by Mr. Meholick. All voted in favor of the motion to deny the variance request. Variance request is denied.

Correspondence: *None*

Special Topics: *None*

Miscellaneous ZBA Topics:

1. Next ZBA meeting is scheduled for Tuesday, November 25, 2014, at 7:00PM.

A motion was made by Lee Daigler to adjourn the meeting at 9:40 PM, and seconded by Jim Schlemmer.

Submitted by:

James G. Meholick
Secretary

Attachments: Town of Pendleton Zoning Board of Appeals Sign-In Sheet
Public Hearing Mailing List
Town of Pendleton Notice of Public Hearing for Mr. Todd Sicard
Town of Pendleton Public Hearing Request Form for Mr. Todd Sicard
Site Survey of Property for Mr. Todd Sicard
Town of Pendleton Notice of Public Hearing for Ms. Diane Wasik
Site Survey of Property for Ms. Diane Wasik
Sketch of Property with Home & Garage for Ms. Diane Wasik
Letter from Dave Gerber to the ZBA for Ms. Diane Wasik
Town of Pendleton Notice of Public Hearing for Mr. Michael Zimmerman
Town of Pendleton Public Hearing Request Form for Mr. Michael Zimmerman
Aerial View of Home & Accessory Structure for Mr. Michael Zimmerman
Photograph of Accessory Structure for Mr. Michael Zimmerman
Town of Pendleton Notice of Public Hearing for Mr. Douglas Clark
Town of Pendleton Planning Board Subdivision Denial Letter for Mr. Clark
Right-to-Farm Law of Niagara County for Mr. Douglas Clark
Aerial Photograph of Property for Mr. Douglas Clark
Aerial Photograph of Property for Mr. Ivan Yatchuk