

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
April 24, 2018 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 were present at the meeting. No changes were made to the ZBA agenda submitted by Wolfgang Buechler.

PUBLIC HEARINGS:

Robert Leible
6750 Campbell Boulevard
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton for an accessory structure that was placed at a front setback of 120 ft. on his property where a minimum of 150 ft. is required per Town Code. The front yard setback variance request would be 30 ft. as per Town Code §247-34.F.(2). The property is approximately 2.78 acres and is R2 medium density residential zoning.

Mr. Leible presented the Town of Pendleton Building Inspector's denial and site survey of the property. Mr. Leibel indicated that the 12 ft. x 20 ft. accessory structure had a setback that matched his neighbor's garage, and that several properties near his home have buildings at different setbacks. The structure was delivered in October of 2017 and the building inspector visited the property 3 weeks after installation.

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

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

Thomas Elberson
5822 Dunnigan Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a new 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure on his property where a maximum of 600 sq. ft. is allowed per Town Code. The area variance request would be 600 sq. ft. as per Town Code §247-34.E.(1). The property is approximately 1.7 acres and is R2 medium density residential zoning.

Mr. Elbersen presented the Town of Pendleton Building Inspector's denial and site survey of the property. It was noted that the property is currently vacant land, but the permit for the accessory structure would only be issued with the new single family home permit that was submitted to the Building Department in March 2018. Mr. Elbersen indicated that he needed a larger structure for his boat and was looking to purchase 10 acres of property adjacent to his current lot. It was also noted that the Building Inspector informed us that the foundation for the home needed to be in place before the accessory structure was built, and the house was to be completed within 1 year.

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

The public hearing was closed at approximately 7:18 PM.

Michael Schmit
5972 Fisk Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a new accessory structure at a height of 29 ft. on his property where a maximum of 20 ft. is allowed per Town Code. The height variance request would be 9 ft. as per Town Code §247-34.F.(3)(d). The property is approximately 4.9 acres and is R2 medium density residential zoning.

Michael Schmit was unable to attend the public hearing and was represented by his father, Paul Schmit; and his fiancée, Kaitlynn Walker. Mr. Paul Schmit presented the Town of Pendleton Building Inspector's denial, site survey of the property, and illustration of the proposed building. Mr. Schmit indicated that the 1st floor with 11 ft. high doors would be used for storage of his son's RV & patrol car, and the 2nd floor unfinished attic would be used for future storage.

Mr. Joe Corto who sold the property to Mr. Schmit, was present at the public hearing. He felt strongly that the proposed accessory structure would be like a second home, and indicated to the ZBA members that the property was sold with the following deed restrictions in order to maintain the character of the properties that he sold in the neighborhood:

- * Minimum 1,800 sq. ft. size home.
- * One single family home on the property.
- * No business was to be operated from the property.
- * No pole barns. The pole barn restriction would go away in 7 years.

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

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

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Dennis Welka to accept the minutes of the March 27, 2018 meeting, and was seconded by Lee Daigler. All voted in favor.

Specific Board Deliberation Actions:

**Robert Leible
6750 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 not create an undesirable change to the neighborhood and nearby properties because a neighboring property has an accessory structure at or before the setback of Mr. Leible's structure.

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

It was agreed that a alternative solution would be to relocate the building further back on the property to meet town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was not substantial as it was approximately 20% closer than town code allows.

- 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. Daigler to grant the front yard variance as detailed in the request, and was seconded by Mr. Schlemmer. Mr. Schlemmer, Mr. Buechler & Mr. Daigler voted in favor, and Mr. Welka & Mr. Meholick voted against. The variance request was approved.

Thomas Elberson
5822 Dunnigan Road
Pendleton, New York

A motion was made by Mr. Schlemmer to table the deliberation for one month to clarify the rules regarding the simultaneous building of an accessory structure and residence. The motion was seconded by Mr. Meholick. All voted in favor.

Michael Schmit
5972 Fisk Road
Pendleton, New York

A motion was made by Mr. Buechler to table the deliberation for one month to review the deed restrictions with the Town Attorney, Mr. Ned Perlman. The motion was seconded by Mr. Meholick. All voted in favor.

Andrew Rawe (Continuation of February 27th Public Hearing)
6971 Bear Ridge Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 44 ft. x 66 ft. (2,640 sq. ft.) accessory structure on his property where a maximum of 2,000 sq. ft. is required per Town Code. There is also an existing accessory structure on the parcel that is 857 sq. ft., for a total area of 3,497 square feet. The area variance request would be 1,497 sq. ft. as per Town Code §247-34.E.(3). The property is approximately 21.9 acres and is R2 medium density residential zoning.

During the public hearing it was determined that the accessory structure sizes did not include the overhangs on the proposed and existing buildings, and the property size was corrected to 26 acres. The proposed accessory structure size is 2,640 sq. ft. plus the overhang at 888 sq. ft., for a total of 3,528 square feet. The existing building size was 1,300 sq. ft. with an overhang of 602 sq. ft., for a total of 1,902 square feet. The total aggregate area of both builds is 5,430 square feet. After corrections for sizing, the variance request was modified to 3,430 square feet.

The application was also amended during the public hearing to also include a height variance for the proposed structure of 1 ft. to allow for a total height of 21 feet.

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 as it would have a negligible visual impact from the road due to the contour of the property.

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

It was agreed that there were no alternative solutions that would not require a variance to meet town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was approximately 2.5 times greater than town code allows.

- 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 as the slope of the property is away from the road.

- 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 grant an area variance of 2,542 sq. ft. and a height variance of 1 ft., allowing for a new structure of 2,640 sq. ft. with a total height of 21 feet; conditioned on a 1 year time limit on completion; and conditioned on the existing structure remaining as is - i.e. not rebuilt or replaced with a new structure. The motion was seconded by Mr. Meholick. Mr. Schlemmer, Mr. Buechler, Mr. Meholick & Mr. Daigler voted in favor, and Mr. Welka voted against. The variance request was approved.

Blair Maurer (Continuation of March 27th Public Hearing)

**4555 Meyer Road
Pendleton, New York**

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a new 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure with a 12 ft. x 40 ft. canopy overhang (480 sq. ft.) on his property for a total area of 1,680 sq. ft. where the maximum allowed is 600 sq. ft. per Town Code. The owner also wishes to build at a peak height of 22 ft. where 16 ft. maximum is allowed. The area variance request would be 1,080 sq. ft. as per Town Code §247-34.F.(3)(d), and the height variance would be 6 ft. as per Town Code §247-34.E.(2). The property is approximately 1.8 acres and is R2 medium density residential zoning.

The evaluation of the variance request was deemed to be essentially the same as from the ZBA minutes dated April 28, 2015.

A motion was made by Mr. Schlemmer to grant an area variance of 600 sq. ft. and a height variance of 6 ft., allowing for a new structure of 1,200 sq. ft. with a total height of 22 feet; conditional on a 1 year time limit on completion. The motion was seconded by Mr. Meholick. Mr. Schlemmer, Mr. Buechler, Mr. Meholick & Mr. Daigler voted in favor, and Mr. Welka voted against. The variance request was approved.

New Inquiries to ZBA: None

Correspondence: None

Special Topics: None

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, May 22, 2018, at 7:00PM.

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

Submitted for:

James G. Meholick
Secretary

Attachments: Town of Pendleton Zoning Board of Appeals Sign-In Sheet

Town of Pendleton Denial of Building Application for Mr. Robert Leible
Town of Pendleton Public Hearing Request for Mr. Robert Leible
Town of Pendleton Notice of Public Hearing for Mr. Robert Leible
Public Hearing Mailing List for Mr. Robert Leible
Site Survey of Property for Mr. Robert Leible

Town of Pendleton Denial of Building Application for Mr. Thomas Elberson
Town of Pendleton Public Hearing Request for Mr. Thomas Elberson
Town of Pendleton Notice of Public Hearing for Mr. Thomas Elberson
Public Hearing Mailing List for Mr. Thomas Elberson
Site Survey of Property for Mr. Thomas Elberson

Town of Pendleton Denial of Building Application for Mr. Michael Schmit
Town of Pendleton Public Hearing Request for Mr. Michael Schmit
Town of Pendleton Notice of Public Hearing for Mr. Michael Schmit
Public Hearing Mailing List for Mr. Michael Schmit
Site Survey of Property for Mr. Michael Schmit
Pictures of Accessory Structure for Mr. Michael Schmit