

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
January 22, 2019 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 were made to the ZBA agenda submitted by Wolfgang Buechler.

PUBLIC HEARINGS:

Paul McDermitt
4623 Mapleton Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 30 ft. x 40 ft. (1,200 sq. ft.) accessory structure on property at a front yard setback of 138 ft. where a minimum of 150 ft. is allowed as per Town Code. The front yard setback variance request would be 12 ft. as per Town Code §247-34.F(3)(a). The property is 2.24 acres and is CO-1 Light Commercial zoning.

Mr. McDermitt presented the Town of Pendleton Building Inspector's denial, site survey of the property, and sketch of the proposed structure & existing house illustrating where they would like to locate the accessory structure. Mr. McDermitt indicated that he needed the building for storage of his lawn mower, trailer, tractor & classic car. It was noted that at the 138 ft. setback the back of the building would be 3 ft. from the neighbor's tree and he was concerned about it falling on the building if it was located further back on the property.

Wolf Buechler advised the ZBA that the size of the property was incorrect on the denial, request & notice of public hearing. It has been changed above from 1.3 acres to 2.24 acres.

The public hearing was closed at approximately 7:15 PM.

Philip Wojtas
6697 Dublin Lane
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton for a side yard setback variance of 9 ft. where a minimum of 15 ft. is allowed as per Town Code on a constructed 20 ft. x 16 ft. accessory structure on property. The side yard setback variance request would be 9 ft. as per Town Code §247-34.F(2)(b). The property is 0.74 acres and is R-2 medium density residential zoning.

Mr. Wojtas was not present at the public hearing.

The public hearing was closed at approximately 7:35 PM.

Brian Miller (Continuation of December 18th Public Hearing)
5874 Fisk Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 32 ft. x 60 ft. (1,920 sq. ft.) accessory structure on property where there is an existing 26 ft. x 40 ft. (1,040 sq. ft.) accessory structure, for a total of 2,960 sq. ft. where a maximum of 1,200 sq. ft. is allowed as per Town Code. The area variance request would be 1,760 sq. ft. as per Town Code §247-13.E(2). The property is 6.98 acres and is R-2 medium density residential zoning.

Wolf Buechler received input from the Building Inspector, Jason Thompson, that the existing house was not a habitable residence with no Certificate of Occupancy, needed a permit to renovate the home, and the owner could apply for the accessory structure permit at the same time as the house.

The public hearing was closed at approximately 7:40 PM.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Dennis Welka to accept the minutes of the December 18, 2018 meeting, and was seconded by Jim Schlemmer. All voted in favor.

Specific Board Deliberation Actions:

Paul McDermitt
4623 Mapleton Road
Pendleton, New York

The ZBA board reviewed the Area Variance tests for the front yard setback of the accessory structure, 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 an alternative solution would be to locate the building at a 150 ft. front yard setback that met town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was not substantial as it was 8% of the minimum setback required by town code.

- 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. Dennis Welka to grant the front yard setback variance as detailed in the request with the condition that the project be completed in one year. The motion was seconded by Mr. Jim Schlemmer. All voted in favor.

Philip Wojtas
6697 Dublin Lane
Pendleton, New York

The ZBA board reviewed the Area Variance tests for the side yard setback of the accessory structure, 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 current location could affect the potential sale of the property next door.

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

It was agreed that an alternative solution would be to tear down the shed or relocate it to meet town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was 60% of the minimum setback required by town code.

- 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 structure was constructed without a permit.

A motion was made by Mr. Meholick to deny the side yard setback variance as detailed in the request, and was seconded by Mr. Welka. All voted in favor.

**Brian Miller (Continuation of December 18th Public Hearing)
5874 Fisk Road
Pendleton, New York**

A motion was made by Mr. Buechler to table the deliberation and was seconded by Mr. Meholick. All voted in favor.

New Inquiries to ZBA: None

Correspondence: None

Special Topics:

1. The ZBA reviewed the contact information for the board & town government, and no changes were made..
2. The ZBA board set the 2019 and Jan 2020 schedule for the 4th Tuesday of every month with the exception of the April 30, 2019; and December 17th, 2019 meetings. The ZBA also set the 2019 start time for the meetings at 7:00PM.

A motion was made by Wolf Buechler to accept the 2019 meeting schedule, and was seconded by Dennie Welka. All voted in favor.

3. The ZBA board reviewed the current sign-in sheet and no changes were made to the current form.
4. The ZBA board reviewed the 2018 status & rollover balances for training, and 2019 requirements.
5. The ZBA board reviewed the 2018 attendance for each member.
6. The ZBA board reviewed the current “Public Hearing Request to Petition for a Variance” form. The ZBA recommends that the wording in the last line of the bottom paragraph be changed to “If variance is for a greater than 1800 sq. ft. structure, the Planning Board needs to review prior to the Public Hearing.
7. The ZBA board reviewed the referral requirement to the Niagara County Planning Board.
8. The ZBA board reviewed the notification requirement to neighboring municipalities.
9. Reappointment Status: Jim Meholick is up for appointment to a 5 year term.
10. Jim Schlemmer & Dennis Welka signed the form acknowledging receipt of the Town of Pendleton Code of Ethics & Sexual Harassment Policy.

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, February 26, 2019, at 7:00PM.

A motion was made by Dennis Welka to adjourn the meeting at 8:30 PM, and seconded by Jim Meholick. 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. Paul McDermitt
Town of Pendleton Public Hearing Request for Mr. Paul McDermitt
Town of Pendleton Notice of Public Hearing for Mr. Paul McDermitt
Site Survey of Property for Mr. Paul McDermitt
Sketch of Proposed Building Location for Mr. Paul McDermitt

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