

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
May 28, 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:

MJP Airport LLC
4829 Tonawanda Creek Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to request a variance for a lot width of 97 ft. where the minimum allowed is 100 ft. per Town Code. The lot width variance request would be 3 ft. as per Town Code §247-11.C(1). The property is 23.3 acres and is R-2 medium density residential zoning.

Mr. Sean Hopkins & Ken Zollitsch represented MJP Airport LLC and presented the Town of Pendleton Building Inspector's denial, and site survey of the property. Mr. Hopkins indicated that they were requesting to sub-divide two adjacent properties to build single family homes at a 60 ft. to 100 ft. front yard setback, with each property meeting the minimum lot area of 25,000 square feet. The front of the above property at a width of 139.18 ft. is at an angle, but the town code measures the lot width as 97 ft. which is perpendicular between the lot boundaries.

The fire chief, Mr. Glen Christman, was present at the public hearing as he was concerned that the parcel was going to be utilized as an airport. He also indicated that there was a rumor of a cell tower being erected on the property in the future.

Mr. Francis DeMarco, a neighbor to the property, expressed his concern about maintaining the view from his backyard with respect to placement of the future dwelling on the proposed property.

The public hearing was closed at approximately 7:20 PM.

Mike Goris
5501 Irish Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a covered porch at a front yard setback of 48.7 ft. where a minimum of 60 ft. is allowed per Town Code. The front yard setback variance request would be 11.3 ft. as per Town Code §247-11.D(1). The property is 0.84 acres and is R-2 medium density residential zoning.

Mr. Goris presented the Town of Pendleton Building Inspector's denial, and site survey sketch of the property showing the location of the proposed porch. Mr. Goris indicated that the raised deck porch with gabled roof would be located on the existing 7 ft. x 16 ft. concrete pad. The porch would be built 7 ft. x 20 ft. so he could access the front door from the decking, and was building the porch for aesthetic purposes.

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

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Jim Schlemmer to accept the minutes of the April 30, 2019 meeting, and was seconded by Dennis Welka. All voted in favor.

Specific Board Deliberation Actions:

MJP Airport LLC
4829 Tonawanda Creek Road
Pendleton, New York

The ZBA board reviewed the Area Variance tests for the lot width of the property, 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 the only alternative solution would be to not subdivide the property.

- c. Is the requested variance substantial?

It was agreed that the requested variance was not substantial as they were requesting 3 ft. where 100 ft. minimum is allowed 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. Jim Schlemmer to grant the lot width variance request with the condition that the use of each lot resulting from the proposed subdivision be limited to a single family residence compliant with all code setback requirements. The motion was seconded by Mr. Dennis Welka. All voted in favor.

Mike Goris
5501 Irish Road
Pendleton, New York

The ZBA board reviewed the Area Variance tests for the front yard setback of the porch, 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 was being built on the existing concrete pad.

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

It was agreed that there was no alternative solution that would meet 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 not self-created as the pad was existing.

A motion was made by Mr. Dennis Welka to grant the front yard setback variance request with the conditions that the project be completed within a one year time limit, and the 7 ft. x 20 ft. porch be constructed over an existing 7 ft. x 16 ft. concrete pad extending no more than an additional 4 ft. along the front of the house. The motion was seconded by Mr. Jim Schlemmer. All voted in favor.

Gino Pinto (Continuation from April Meeting)
6885 Campbell Boulevard
Pendleton, New York

Eric Bogart (Continuation from April Meeting)
6889 Campbell Boulevard
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a single family house on the property at a front yard setback of 394 ft. where a maximum of 250 ft. is allowed per Town Code. The front yard setback variance request would be 144 ft. as per Town Code §247-10.D(3). The property is 2.85 acres and is R-1 low density residential zoning.

The ZBA board reviewed the Area Variance tests for the front yard setback of the single family house, 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. It was felt that the character of a neighborhood is considered by the town code. ZBA member Jim Schlemmer didn't feel that the proposed location of the house creates this undesirable change.

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

It was agreed that the alternative solution would be to build the house at a front yard setback that meets town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was 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 have an adverse effect on the physical or environmental conditions in the neighborhood. One neighbor feels that it is an issue as the area is low and will create additional drainage issues.

- 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. Buechler to table the deliberation to review the view of the property from the condominiums, drainage concerns, and contact the town board for their position on front yard setbacks. The motion was seconded by Mr. Meholick. Mr. Buechler, Mr. Meholick, Mr. Daigler & Mr. Welka voted in favor, and Mr. Schlemmer voted against. The deliberation was tabled to the next meeting.

Richard Johnson (Continuation from April Meeting)
5568 Mapleton Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 28 ft. x 32 ft. (896 sq. ft.) addition to an existing 528 sq. ft. detached garage, where 50% of the primary structure (1,248 sq. ft.) is allowed (624 sq. ft.). In addition, the owner wishes to construct the garage at a 12 ft. side yard setback where a minimum of 15 ft. is allowed per Town Code. The area variance request would be 800 sq. ft. as per Town Code §247-11.(I), and the side yard setback variance request would be 3 ft. as per Town Code §247-11.(E). The property is 1.2 acres and is R-2 medium density residential zoning.

The ZBA board reviewed the Area Variance tests for the area & 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 not create an undesirable change to the neighborhood and nearby properties. It was felt that since the building would extend towards the rear of the property the sight lines would be minimally affected, and it maintains the existing side yard setback.

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

It was agreed that an alternative solution would be to add on to the house to meet the town code area requirement.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was 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 it was unknown whether the variance would 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. Meholick to grant the requested size & side yard setback variances as detailed in the request with a one year time limit. The motion was seconded by Mr. Welka. All voted in favor.

Bradley Pagels (Continuation from April Meeting)
6341 Campbell Boulevard
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 12 ft. x 24 ft. (288 sq. ft.) accessory structure on property at a front yard setback of 45 ft. where a minimum of 150 ft. is allowed as per Town Code. The front yard setback variance request would be 105 ft. as per Town Code §247-34.F(2)(a). The property is 3.0 acres and is R-2 medium density residential zoning.

The ZBA board reviewed the Area Variance tests for the area & 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 as the proposed accessory structure would be located too close to the road.

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

It was agreed that the alternative solution would be to move the accessory structure further back in the property so a reduced variance would be required.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was 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. Buechler to grant a front yard setback variance allowing alignment of the accessory structure with the front line of the existing detached garage, with a one year time limit. The motion was seconded by Mr. Meholick. All voted in favor.

New Inquiries to ZBA: None

Correspondence:

1. Letter from Young/Sommer LLC regarding the application from Bear Ridge Solar for a Certificate of Environmental Compatibility.
2. Letter from New York State Board on Electric Generation Sitting and the Environment regarding the application of Bear Ridge Solar.
3. Letter from Gross Shuman, Attorneys at Law, regarding the Gino Pinto & Eric Bogart variance request.

Special Topics: *None*

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, June 25, 2019, at 7:00PM.

A motion was made by Wolfgang Buechler to adjourn the meeting at 9:20 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 MJP Airport LLC
 Town of Pendleton Public Hearing Request for MJP Airport LLC
 Town of Pendleton Notice of Public Hearing for MJP Airport LLC
 Public Hearing Mailing List for MJP Airport LLC
 Site Survey of Property for MJP Airport LLC

Town of Pendleton Denial of Building Application for Mr. Mike Goris
 Town of Pendleton Public Hearing Request for Mr. Mike Goris
 Town of Pendleton Notice of Public Hearing for Mr. Mike Goris
 Public Hearing Mailing List for Mr. Mike Goris
 Sketch of Porch on Property for Mr. Mike Goris