

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
July 23, 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 were present at the meeting. No changes were made to the ZBA agenda submitted by Wolfgang Buechler.

PUBLIC HEARINGS:

Francis Pleto
7297 Paddock Ridge
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 his property at a side yard setback of 7 ft. where a minimum of 15 ft. is allowed, and a rear yard setback of 8 ft. where a minimum of 20 ft. is allowed per Town Code. The side yard setback variance request would be 8 ft. as per Town Code §247-34.F(2)(b), and the rear yard setback variance request would be 12 ft. as per Town Code §247-34.F(2)(c). The property is 144 ft. x 282 ft. (0.93 acres) and is R-2 medium density residential zoning.

Mr. Pleto presented the Town of Pendleton Building Inspector's denial, and site survey of the property. Mr. Pleto indicated that he wanted to locate the accessory structure as far back in his property as possible as it would otherwise block his landscaping and view of his back yard, as well as his neighbors back yard views. An enclosed stone pad symmetrical to the property lines was already completed.

Mr. Pleto's neighbors to the left on 7293 Paddock Ridge & back of his property on 7285 Paddock Ridge were okay with the proposed location of the accessory structure.

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

Ronald Cappello (Gasper Fulfaro, Agent)
5532 Killian Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to operate a stone crushing operation in a zoning district where such activity is not a permitted use per Town Code §247-14. Stone crushing operation is also located 450 ft. from an occupied dwelling where no power activated sorting machinery or equipment may be located within 600 ft. of any occupied dwelling as per Town Code §247-43.B. Variances sought are a use variance allowing use of the property for stone crushing operation and an area variance of 150 ft. from the 600 ft. required setback. The property is 6.6 acres and is LI Light Industrial zoning.

Mr. Gasper Fulfaro, who is the tenant on Mr. Cappello's property, runs an excavating & concrete crushing operation. Mr. Fulfaro indicated that the property was being used to store his equipment for concrete removal, and recently he had purchased equipment to crush & reuse the concrete for driveway base. For the past 18 years he had outsourced this crushing operation. His plans were to operate only 2 weeks per year (80 hours), 6 to 8 hours per day. He provided a noise survey report from R.R. Equipment Company that indicated the noise to be no more than 75 to 77 decibels at a distance of 50 ft. from the crusher.

Mr. Fulfaro also stated that he thought he had obtained the proper approvals prior to purchasing the stone crushing equipment. He did not receive the Notice of Violation and Order to Remedy in a timely basis as Mr. Cappello had moved and the letter was not received until recently.

Numerous neighbors were present at the public hearing, and indicated that they were not in favor of the area & use variance requests. The major points were as follows:

- * Noise from the excavator was so loud it shook the house.
- * The noise started at 5:45AM and lasted until 7:15PM at night. The noise & dirt was not suitable for families.
- * Over 85 decibels was measured in the back yards on Ridgeview Drive and is considered harmful to hearing.
- * The property is an eyesore to the neighborhood in the spring & winter. The beeping of the trucks & crushing of the concrete vibrates the bed in homes, and the dust is so excessive that they can't open their windows.
- * The dust is a pollution issue and affects their quality of life, and could produce long term health problems.
- * The dust was collecting in a nearby pond and creating a sludge.

A motion was made by Mr. Buechler at approximately 8:258 PM to table the public hearing to obtain a letter from the town officials if this operation was a use by right, and was seconded by Mr. Welka. All voted in favor.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Jim Schlemmer to accept the minutes of the June 25, 2019 meeting, and was seconded by Dennis Welka. All voted in favor.

Specific Board Deliberation Actions:

**Francis Pleto
7297 Paddock Ridge
Pendleton, New York**

The ZBA board reviewed the Area Variance side & rear yard setbacks for 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?

While the neighbors present at the public hearing were okay with the proposed location of the shed, the board members felt that the granting of the variance would create an undesirable change to the neighborhood and nearby properties due to the proximity to the property lines.

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

It was agreed that the alternative solution would be to locate the accessory structure at a location that met Town Code.

- c. Is the requested variance substantial?

It was agreed that all the variance requests were 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 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. Meholick to deny all the variance requests, and was seconded by Mr. Welka. All voted in favor to deny the request.

Scott Donner
5415 Feigle Road
Pendleton, New York

A motion was made by Mr. Daigler to table the deliberation to review a possible alternate location of the accessory structure on the property, and was seconded by Mr. Meholick. All voted in favor.

Gino Pinto (Continuation from June Meeting)
6885 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 Board at the June meeting requested Mr. Pinto to provide soil samples starting at 250 ft. to support claims that no other portions of the property provide suitable alternative build locations. No objective information was provided and Mr. Pinto was not present at the meeting.

The ZBA board reviewed the Area Variance front yard setback for the single family home, 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 location would create drainage issues on the property. The Town Board was also concerned about drainage to Campbell Blvd which is a current problem during heavy rains.

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

It was agreed that the alternative solution would be to locate the accessory structure at or before the 250 ft. location that met 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?

The board members felt that it would have an adverse effect on the physical or environmental conditions in the neighborhood due to water 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 deny the variance request, and was seconded by Mr. Welka. All voted in favor to deny the request.

Eric Bogart (Continuation from June 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 Board at the June meeting requested Mr. Bogart to provide soil samples starting at 250 ft. to support claims that no other portions of the property provide suitable alternative build locations. No objective information was provided and Mr. Bogart was not present at the meeting.

The ZBA board reviewed the Area Variance front yard setback for the single family home, 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 location would create drainage issues on the property. The Town Board was also concerned about drainage to Campbell Blvd which is a current problem during heavy rains.

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

It was agreed that the alternative solution would be to locate the accessory structure at or before the 250 ft. location that met 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?

The board members felt that it would not have an adverse effect on the physical or environmental conditions in the neighborhood due to water 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 deny the variance request, and was seconded by Mr. Welka. All voted in favor to deny the request.

Dino Ceccato (Continuation from June Meeting)
6716 Bear Ridge Road
Pendleton, New York

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to subdivide vacant land into three parcels with one lot containing a garage. An accessory structure is subordinate in area and/or purpose to the principal residence. The variance request would be for relief for an accessory structure on a vacant parcel of land as per Town Code §247-34.A(2). The property is 35.2 acres and is R-2 medium density residential zoning.

The ZBA board reviewed the Area Variance, 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 it would impact the character of the neighborhood, as well as, implications on the community of granting this variance in opposition to the Town Code.

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

It was agreed that the alternative solutions included, but not limited to razing the structure, holding the property sale until a buyer is ready to construct a residence, or the buyer examining possibility of his property & the planned parcel be conjoined as one parcel.

- 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?

The board members felt that it 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. Meholick to deny the variance request, and was seconded by Mr. Welka. Mr. Meholick, Mr. Welka, Mr. Buechler & Mr. Schlemmer voted to deny the request, and Mr. Daigler voted against denying the request. The requested variance was denied.

New Inquiries to ZBA: None

Correspondence: None

Special Topics: None

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, August 27, 2019, at 7:00PM.

A motion was made by Jim Schlemmer to adjourn the meeting at 9:40 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. Francis Pleto
 Town of Pendleton Public Hearing Request for Mr. Francis Pleto
 Town of Pendleton Notice of Public Hearing for Mr. Francis Pleto
 Public Hearing Mailing List for Mr. Francis Pleto
 Site Survey of Property for Mr. Francis Pleto
 Accessory Structure Peermit Application for Mr. Francis Pleto

Town of Pendleton Denial of Building Application for Mr. Ronald Cappello
 Town of Pendleton Public Hearing Request for Mr. Ronald Cappello
 Town of Pendleton Notice of Public Hearing for Mr. Ronald Cappello
 Public Hearing Mailing List for Mr. Ronald Cappello
 Letter Authorizing Gasper Fulfaro from Mr. Ronald Cappello
 Town of Pendleton Notice of Violation for Mr. Ronald Cappello
 Town of Pendleton Order to Remedy for Mr. Ronald Cappello
 RR Equipment Co. Nosie Survey Report for Mr. Ronald Cappello
 Letter from Anthony DellIsola Opposing Variance for Mr. Ronald Cappello