

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
February 25, 2020 Meeting

Members:

Wolfgang Buechler, Chairman
Lee Daigler
Nicholas Graves
James Schlemmer
Dennis Welka , Secretary

The ZBA open regular meeting was called to order by Mr. Wolfgang Buechler at 7:00 p.m. ZBA members Mr. Buechler, Mr. Daigler, Mr. Graves, Mr. Schlemmer, Mr. Welka, and Town Prosecutor Ted Joerg was present at the meeting. No changes were made to the ZBA agenda submitted by Wolfgang Buechler.

PUBLIC HEARINGS:

Jamie McDonough
4561 Beach Ridge Rd.
Lockport, NY 14094

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 960 sq. ft. accessory structure (24 ft. x 40 ft.) where the maximum accessory structure size allowed by Town Code §247-34.E.(1) is 600 sq. ft. Owner also wishes to keep existing 10 ft. x 12 ft. shed on property. Area variance sought is an aggregate accessory structure size variance of 480 sq. ft. Property is 125 ft. x 375 ft. and is zoned R-2 Medium Density Residential.

Mr. McDonough presented the Town of Pendleton Building Inspector's denial, and site survey of the property. Misters Buechler, Daigler, Schlemmer, Graves and Welka had visited the property.

During the hearing, it was determined that the planned structure height was 16'10", where maximum accessory structure height allowed by Town Code §247-34.F.(2)(d) is 16 ft. The variance application was amended to include a 2 ft. maximum height variance allowing for an 18 ft. structure height.

Mr. Glenn Valentine of 4581 Beach Ridge Rd. expressed concern about potential drainage from proposed structure, especially toward the rear of the property. Setback of the proposed structure from the rear property line was discussed in detail and Mr. Valentine agreed that drainage impact on his property was unlikely.

The public hearing was closed at approximately 7:18 p.m.

Tim Freundschuh
Vacant Lot 166.00-1-14 (East of 6079 Tonawanda Creek Road)
Lockport, NY 14094

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to allow construction of a single family residence on a nonconforming lot in an R-1 district. Lot width following street line is 80 ft. where minimum lot width allowed is 125 ft. per Town Codes §247-10.C.(1) and §247-10.C.(4). Owner also requests a variance to build the residence at approximately 550 ft. from front property line where 250 ft. is maximum allowed per Town Code § 247-10.D.(3).

Area variances requested are lot width variance of 45 ft. frontage and a front setback variance of 300 ft. Property is 80ft. wide, approximately 40 acres in overall size, and zoned R-1 Residential.

Mr. Freundschuh presented the Town of Pendleton Building Inspector's denial, site survey and flood plain map of the property. Mistrs Buechler, Daigler, Schlemmer, Graves and Welka had visited the property.

The applicant explained that the proposed residence location was necessary to avoid a designated FEMA flood plain between the residence and the front property line, as well as, DEC wetlands to the east. He proposes to site the residence as close to the front property as possible within these constraints.

Mr. Rossi, Mr. Terranova and Mr. Lanternier, all neighboring property owners, expressed concerns about the proposed location and the possibility of the creation of a subdivision. Mr. Freunschuh stated that his plans are for a single family residence and remaining property would not be developed. Location of structure would also not obstruct any sight lines.

Mr. Laternier also recommended, from experience, that the applicant should consider placing the residence in a way that avoids making his front yard his neighbor's back yard.

The public hearing was closed at approximately 7:42 p.m.

Samer Rizek
4097 Beach Ridge Rd.
North Tonawanda, NY 14120

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to extend the existing nonconforming use on the property to include leasing a portion of the building for office space and a retail business in addition to his existing cleaning business located in the building.

The existing nonconforming use derives from Town Code §247-59. Property is 1.1 acres and is zoned R-1 Residential.

Mr. Rizek presented the Town of Pendleton Building Inspector's denial. Misters Buechler, Daigler, Schlemmer, Graves and Welka had visited the property.

Mr. Rizek explained that he is seeking an interpretation on extending nonconforming use. He stated that he purchased the property for his cleaning service and he is interested in renting out a portion of the property to a different business. He proposes rental, as opposed to leasing.

Mr. Hubbard and Mrs. Hunt, neighbors, stated that they were present simply to gain information and had no problems with the current business. Mr. Leible, a neighbor, sent a letter stating that he had no concerns with the request for a variance.

A letter from Tim Masters, former building inspector, was submitted that had approved continuation of nonconforming use for Mr. Rizek's cleaning business in 2017. Also submitted was a recent letter from Mr. Follendorf, current code enforcement officer, denying approval of the proposed secondary business.

The public hearing was closed at approximately 8:19 p.m.

Richard Littlefield
7381 Bear Ridge Rd.
N. Tonawanda, NY 14120

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to retain a pre-existing accessory structure totaling 1500 sq. ft. (30 ft. x 50 ft.) where the maximum accessory structure size allowed by Town Code §247-34.E.(2) is 1200 sq. ft. There are other existing structures on the property comprising an additional 1328 sq. ft. of accessory structure size. Area variance sought is an aggregate accessory structure size variance of 1628 sq. ft. Property is 4.3 acres and is zoned R-2 Residential.

Mr. McDonough presented the Town of Pendleton Building Inspector's denial, and site survey of the property. Misters Buechler, Daigler, Schlemmer, Graves and Welka had visited the property.

During the hearing, it was determined that the structure was erected two years ago, said to be temporary, and erected without a permit. Mr. Littlefield stated that he would like it to remain and that it is not temporary.

Mrs. Sharon Barber of 7399 Bear Ridge Rd. expressed concerns of drainage onto another neighbor's property. She felt the problem sources were the structure and the difference in property elevations. She also added that the structure was an eyesore. Mr. Littlefield stated that he was amenable to making any corrections that might be necessary to ameliorate the situation. Mrs. Brown, also a neighbor, sent an email expressing her opposition to the variance.

The public hearing was closed at approximately 8:39 p.m.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Jim Schlemmer to accept the minutes of the January 28, 2020 meeting, and was seconded by Dennis Welka. All voted in favor.

Specific Board Deliberation Actions:

**Jamie McDonough
4561 Beach Ridge Rd.
Lockport, NY 14094**

The ZBA board reviewed the Area Variance tests for the area code 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?

The board members felt that granting a reduced variance would not create an undesirable change to the neighborhood and nearby properties as it would be consistent with the character of the neighborhood.

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

It was agreed that the only alternative solution would be to comply with the 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 was unknown if the variance would have an adverse effect on the physical or environmental conditions in the neighborhood. However, the hearing determined that there was significant setback from the rear property line where a neighbor had expressed preliminary concerns.

- 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. Schlemmer to grant a 480 sq. ft. variance allowing for a total aggregate accessory structure size of 1080 sq. ft. with new structure height not to exceed 18 ft. The motion included additional condition that the project must be completed within one year. The motion was seconded by Mr Daigler. Misters Buechler, Daigler, Graves, and Schlemmer voted in favor. Mr. Welka abstained from voting. Motion passed and variance granted

Tim Freundschuh

**Vacant Lot 166.00-1-14 (East of 6079 Tonawanda Creek Road)
Lockport, NY 14094**

The ZBA board reviewed the Area Variance tests for the area code 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?

The board members felt that granting the variance would not create an undesirable change to the neighborhood.

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

It was agreed that the proposed residence location was the only alternative to the applicant due to the floodplain and wetlands constraints on the property.

- 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 was unknown if 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 not self-created.

A motion was made by Mr. Welka to table the decision for input from the Fire Dept. on any concerns. The motion was seconded by Mr. Schlemmer. Misters Buechler, Daigler, Graves, Welka and Schlemmer voted in favor. Motion to table passed.

**Samer Rizek
4097 Beach Ridge Rd.
North Tonawanda, NY 14120**

A motion was made by Mr. Welka to table the decision in order to request further input from the Building Dept. regarding the interpretation details for the denial. The motion was seconded by Mr Schlemmer. Misters Buechler, Daigler, Graves, Welka and Schlemmer voted in favor. Motion to table passed.

**Richard Littlefield
7381 Bear Ridge Rd.
N. Tonawanda, NY 14120**

A motion was made by Mr. Welka to table the decision and refer it to the Building Dept. for further input regarding what buildings were considered as existing accessory structures in determining that size to be 1368 sq. ft. The motion was seconded by Mr. Buechler. Misters Buechler, Daigler, Graves, Welka and Schlemmer voted in favor. Motion to table passed.

New Inquiries to ZBA: *None*

Correspondence: Letter from Mr. Lieble re: Rizek Variance
 Email from Mrs. Brown re: Rizek Variance

Special Topics:

 Disaster Preparedness Training: April 22, 2020 at Wendelville Fire Hall. Advance sign-up required.

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, March 24, 2020, at 7:00 p.m.

A motion was made by Jim Schlemmer to adjourn the meeting at 9:45 p.m. and seconded by Lee Daigler. All voted in favor.

Submitted by:

Dennis J. Welka
Secretary

Attachments:

- Town of Pendleton Denial of Building Application for Mr. Jamie McDonough
- Town of Pendleton Public Hearing Request for Mr. Jamie McDonough
- Town of Pendleton Notice of Public Hearing for Mr. Jamie McDonough
- Town of Pendleton Accessory Structure Permit Application for Mr. Jamie McDonough
- Public Hearing Mailing List for Jamie McDonough
- Site Survey of Property for Mr. Jamie McDonough
- Renderings of Proposed Accessory Structure for Mr. Jamie McDonough

- Town of Pendleton Denial of Building Application for Mr. Timothy Freundsuh
- Town of Pendleton Public Hearing Request for Mr. Timothy Freundsuh
- Town of Pendleton Notice of Public Hearing for Mr. Timothy Freundsuh

Town of Pendleton Accessory Structure Permit Application for Mr. Timothy Freundschuh

Public Hearing Mailing List for Timothy Freundschuh

Site Survey of Property for Mr. Timothy Freundschuh

Flood Plain Survey of Property for Mr. Timothy Freundschuh

Town of Pendleton Denial of Building Application for Mr. Samer Rizek

Town of Pendleton Public Hearing Request for Mr. Samer Rizek

Town of Pendleton Notice of Public Hearing for Mr. Samer Rizek

Public Hearing Mailing List for Samer Rizek

Letter from Mr. Leible

Email from Mrs. Brown

Town of Pendleton Denial of Building Application for Mr. Richard Littlefield

Town of Pendleton Public Hearing Request for Mr. Richard Littlefield

Town of Pendleton Notice of Public Hearing for Mr. Richard Littlefield

Town of Pendleton Accessory Structure Permit Application for Mr. Richard Littlefield

Public Hearing Mailing List for Richard Littlefield

Site Survey of Property for Mr. Richard Littlefield

Pictures of Accessory Structure for Mr. Richard Littlefield

Hearing Sign-in Sheet for 2/25/20