

TOWN OF PENDLETON

ZONING BOARD OF APPEALS

June 23, 2020 Meeting

(Revised 29 July 2020)

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 PM. ZBA members Mr. Buechler, Mr. Daigler (via conference call), Mr. Graves, Mr. Schlemmer, and Mr. Welka, as well as, Town Prosecutor Theodore Joerg were present at the meeting. The agenda was amended to include the Fulfaro hearing which is on hold per mutual agreement between the applicant and the Board.

PUBLIC HEARINGS:

Jennifer & Kevin Dexheimer
5877 Dunnigan Rd.
Lockport, NY 14094

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a second accessory structure that would be over the allowable SF once combined with the existing accessory structure. The aggregate total would be approx. 777 SF. The maximum allowable structure size per Town Codes 247-34.C and 247-34.E(1) is 600 SF. The variance sought is 177 SF. Property is 150 ft. x 250 ft. and is zoned R2 Medium-Density Residential.

The owner stated that he would remove the old structure and plan for a 20 ft. x 30 ft. new accessory structure. These adjustments to the plan eliminate the need for a variance.

The public hearing was closed at approximately 7:13 pm.

Charles Dispenza
6721 Aiken Rd.
Lockport, NY 14094

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct an approximately 350 SF egg storage building closer than the minimum setback requirement of 150 ft. from the front property line as required by Town Code 247-34.F(2)(a). The variance sought is 105 ft. Property is 15 acres and is zoned R1 Low-Density Residential.

The owner stated that he wishes to build a retail/wholesale building for egg sales that would allow customers to drive up, select eggs, and leave payment. Applicant stated that he previously had Ag status and was working to reinstate that.

The public hearing was closed at approximately 7:30 pm.

Timothy Lukasik
4581 Ridgeview South
North Tonawanda, NY 14120

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 575 SF pool house as a second accessory structure that would be over the allowable aggregate accessory structure size once combined with an existing accessory structure. The aggregate proposed accessory structure size is 751 SF where the maximum allowed per Town Codes 247-34.C and 247-34.F(1) is 600 SF. He is also seeking to place the structure at 90 ft. front-yard setback where 150 ft. minimum is required by Town Code 247-34.F(2)(a). Area variances sought are 151 SF aggregate accessory structure size variance and 60 ft. front yard setback variance. Property is 125 ft. x 200 ft. and is zoned R2 Medium-Density Residential.

The owner stated that the existing berm would be removed to accommodate the proposed structure and the building height would be 15 ft. 7 in. The owner added that it was not feasible to locate the building to the north or the west of the existing pool.

The public hearing was closed at approximately 8:00 pm.

Kelly Jordan
7151 Rolling Meadows
North Tonawanda, NY 14120

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to relocate an existing 10 ft. x 12 ft. shed at an 85 ft. front yard setback and 5 ft. side yard setback. The minimum allowable setbacks per Town Codes 247-34.F(2)(a) and 247-34.F(2)(b) are 150 ft. and 15 ft., respectively. The area variances sought are 65 ft. front yard setback and a 10 ft. side lot setback. Property is 165 ft. x 210 ft. and is zoned R2 Medium-Density Residential.

The owner stated that the relocation is necessary because a new pool installation elevated the middle of the back yard and owner fears water runoff damage at the current shed location.

Adjacent neighbors, Joe and Beth DiNicolantonio spoke in opposition to the variance outlining concerns over noise, voles and rabbits. They also stated that the granting of the variance would compromise the aesthetics of the neighborhood and decrease property values. Mr. DiNicolantonio added that proximity of the structure to his property would have a negative impact on his family, specifically his children.

Mariam Treger, a realtor for Howard Hanna also speaking for the DiNicolantonios, spoke in opposition to the variance stating that their house might be devalued by as much as \$30,000. Ms. Treger also stated that Ms. Jordan's problem is self-created should not be allowed.

The public hearing was closed at approximately 8:23 pm.

Nathan Morris
4779 Tonawanda Creek Rd.
North Tonawanda, NY 14120

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 30 ft. x 60 ft. accessory structure with an additional 12ft. x 60 ft. roof overhang for a total accessory structure size of 2520 SF. The maximum allowable structure size per Town Code 247-34.E(2) is 1200 SF. The area variance sought is 1320 SF accessory structure area variance. Property is 178 ft. x 1185 ft. (4.7 AC) and is zoned R2 Medium-Density Residential.

The owner stated that he would remove the existing garage which is in poor condition. The new structure would be built at a height of 20 ft. and all setbacks would comply with code. Owner stated that new structure would be used as a garage to house his vehicles. The SF of his house is 1642 SF.

The public hearing was closed at approximately 8:47 pm.

Joseph Santillo
7172 Creekbend Dr.
North Tonawanda, NY 14120

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 32 ft. x 30 ft. accessory structure at a front yard setback of 120 ft. where the minimum allowable front yard setback per Town Code 247-34.F.(3)(a) is 150 ft. The area variance sought is 30 ft. front yard setback variance. Property is 100 ft. wide and 4.7 acres in total. Property is zoned R2 Medium-Density Residential.

The owner explained his project and location. Upon closer examination of his survey it appears that he would not need a variance to be compliant if he shifted the structure by only a few feet. The ZBA recommended that he go back to the Town Building Dept. to discuss that option in detail.

The public hearing was closed at approximately 9:00 pm.

Richard Scruggs
4675 Meyer Rd.
North Tonawanda, NY 14120

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 28 ft. x 30 ft. (840 SF) accessory structure where the maximum allowable accessory structure size per Town Code 247-34.E(1) is 600 SF. The area variance

sought is 240 SF accessory structure area variance. Property is 109 ft. x 456 ft. and is zoned R1 Low-Density Residential.

The owner stated that the structure would be 13 ft. in height and compliant with all setbacks. His house is 2040 SF.

Jennifer Downing, a neighbor, spoke in opposition to the project, stating that it would detract from the neighborhood, specifically the view from the rear of her property.

The public hearing was closed at approximately 9:22 pm.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Nicholas Graves to accept the minutes of the February 25, 2020 meeting, and was seconded by Jim Schlemmer. All voted in favor.

Specific Board Deliberation Actions:

Littlefield, Richard
7381 Bear Ridge Rd.
Pendleton NY
(Public Hearing on 25 February 2020)

Owner had previously erected a 1,500 SF accessory structure on property where an existing 80 SF (approx.) accessory structure exists for an aggregate accessory structure size of 1580 SF. Maximum aggregate accessory structure size allowed is 1200 SF per Town Codes §247-34.C and §247-34.E(2). Area variance requested is 380 SF aggregate accessory structure size variance. Property is 4.3 acres and zoned R2 Medium-Density Residential.

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' opinions were split on whether granting a variance would 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 reduce size of structure or remove it.

- c. Is the requested variance substantial?

The board members' opinions were split on whether 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 self-created.

Mr. Schlemmer moved to approve the requested 380 SF aggregate accessory structure size variance, specifically with respect to the two existing structures. Mr. Graves seconded the motion. Voting in favor of the motion: Buechler, Daigler, and Schlemmer. Voting against: Graves and Welka. Aggregate accessory structure size variance of 380 SF was approved

Freundschuh, Tim

Vacant lot 166.00-1-14 East of 6079 Tonawanda Creek Rd.

Pendleton NY

(Public Hearing on 25 February 2020)

Proposed Project:

Owner wishes to construct a single family residence at 550 ft. front yard setback where maximum allowed is 250 ft. per Town Code §247-10.D(3). Additionally, frontage of property at the road is 80 ft. where minimum required per Town Code §247-10.C(1) is 125 ft. Area variances requested are 300 ft. front yard residence setback variance and 45 ft. property frontage variance. Property is 4.3 acres and zoned R1 Low-Density Residential.

The Board reviewed property maps which indicated wet lands and floodplains that prevent placement of the residence at a compliant front setback.

The Board contacted the Wendleville Fire Chief for any concerns regarding the department's ability to service the residence in case of fire. Two concerns were noted:

1. Fire truck carries 1000 ft. of fire hose. Therefore, residence must be within that distance from a hydrant.
2. Driveway must be capable of supporting a fire truck.

Both concerns were discussed with the applicant. Mr. Freundschuh asserted that there was a hydrant within 30 ft. of the property line at Tonawanda Creek Rd. and that driveway construction would exceed requirements for a firetruck.

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 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 be compliant which was not feasible on this 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 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.

Mr. Graves moved to approve both variances as requested for a single-family residence. Mr. Welka seconded the motion. Voting in favor of the motion: Buechler, Daigler, Graves, Schlemmer, and Welka. Voting against: None. Decision: Variances approved as requested, limited to a single family residence.

Rizek, Samer
4097 Beach Ridge Rd.
Pendleton NY

(Public Hearing on 25 February 2020)

Owner wishes to lease out a portion of his building for office and retail business space under the existing nonconforming use (see Town Code §247-59) as affirmed by letter dated 20 July 2017 from Tim Masters Pendleton Building Inspector. Interpretation sought is applicability of currently approved nonconforming use to the proposed additional unrelated retail use. Property is 1.1 acres and zoned R1 Low-Density Residential but currently in nonconforming use for a cleaning business, based on historical precedent and 2017 Building Dept review.

Pendleton Code Enforcement Officer, Joseph Follendorf has indicated this new activity is a "change in the originally authorized non-conforming use" in a Denial of Building Application dated 12 February 2020.

Interpretation sought by the applicant: Proposed retail use is an unchanged nonconforming use and therefore a valid extension of existing nonconforming use of the property

The Board considered the historical background of the property, the nature of the current nonconforming business use, the language of the 20 July 2017 letter from Tim Masters, and the nature of the proposed additional unrelated retail business.

Mr. Buechler moved to agree with the interpretation of the Code Enforcement Officer in the Denial of Building Application dated 12 February 2020 that the additional proposed unrelated retail activity is not an approved extension of the existing nonconforming use. Mr. Welka seconded the motion. Voting in favor of the motion: Buechler, Daigler, and Welka. Voting against: Graves and Schlemmer.

Decision: The additional unrelated retail activity is not an approved extension of the existing nonconforming use.

Morris, Nathan
4779 Tonawanda Creek Rd.
Pendleton NY

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 variance would not create an undesirable change to the neighborhood and nearby properties as it would be consistent with the character of the neighborhood. Specifically, the replacement of the existing structure would be beneficial to the neighborhood.

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

It was agreed that the only alternative solution would be to be compliant.

- 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 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 Board also considered, among other things, the placement of the proposed structure and that the new structure would replace an existing structure in poor condition. Discussion ensued on the difference between an accessory structure and a garage.

Mr. Schlemmer moved to approve an accessory structure size variance of 600 SF with conditions for removal of the existing structure and completion of the project in one year. Mr. Graves seconded the motion. Voting in favor of the motion: Buechler, Daigler, Graves, and Schlemmer. Voting against: Welka

Decision: Accessory structure area variance of 600 SF was approved with following conditions:

1. Removal of existing structure
2. One year time limit on completion of project.

Dexheimer, Jenn & Kevin
5877 Dunnigan Rd.
Pendleton, NY

A motion was made by Dennis Welka and seconded by Wolfgang Buechler to refer applicant to Building Dept. for re-evaluation whether the plan is, in fact, compliant with code. Voting in favor of the motion: Buechler, Daigler, Graves, and Schlemmer, Welka. Voting against: none

Dispenza, Charles
6721 Aiken Rd.
Pendleton, NY

James Schlemmer made a motion and seconded by Nicholas Graves to table action on the variance in order to further evaluate the placement of the structure. Voting in favor of the motion: Buechler, Daigler, Graves, and Schlemmer, Welka. Voting against: none

Scruggs, Richard
4675 Meyer Rd.
Pendleton, NY

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 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 be compliant.

- c. Is the requested variance substantial?

It was agreed that the 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 self-created.

Motion was made by Nicholas Graves and seconded by James Schlemmer to grant variance with a one year time limit on completion of the project and a building height not greater than 16 ft. Voting in favor of the motion: Buechler, Daigler, Graves, and Schlemmer, Welka. Voting against: none

Jordan, Kelly
7151 Rolling Meadows
Pendleton, NY

James Schlemmer made a motion and seconded by Nicholas Graves to table action on the variances to evaluate alternative locations on the lot. Voting in favor of the motion: Buechler, Daigler, Graves, and Schlemmer, and Welka. Voting against: none

Santillo, Joseph
7172 Creekbend Dr.
Pendleton, NY

Motion made by Wolfgang Buechler and seconded by James Schlemmer to table action on this variance pending applicant’s discussion with Building Dept. regarding relocation of structure by a minor distance to be compliant with the code.

Lukasik, Timothy
4581 Ridgeview Drive South
Pendleton NY

The Board reviewed each variance request separately.

Area variance(s) sought:

1. 60 ft. front yard setback variance
2. 151 SF aggregate accessory structure size variance

The ZBA board reviewed the Area Variance tests for the area code for the accessory structure, and commented as follows for variance #1:

- 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 variance would create an undesirable change to the neighborhood and nearby properties as it would not 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 be compliant and build pool house in backyard east of pool.

- 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 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 ZBA board reviewed the Area Variance tests for the area code for the accessory structure, and commented as follows for variance #2:

- 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 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 reduce the building size to be compliant.

- c. Is the requested variance substantial?

It was agreed that the 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 self-created.

Mr. Schlemmer moved to deny the front yard setback variance and motion was seconded by Mr. Welka. Voting in favor of the motion to deny front setback variance: Buechler, Schlemmer, and Welka. Voting against motion: Daigler and Graves

Mr. Graves moved to approve an aggregate accessory structure size variance of approx. 151 SF. Mr. Buechler seconded the motion. Voting in favor of the motion to approve aggregate accessory structure size variance: Buechler, Daigler, and Graves. Voting against: Schlemmer and Welka.

Decisions:

1. Accessory structure front yard setback variance of 60 ft. is denied.
2. Aggregate accessory structure area variance of approx. 151 SF is approved

New Inquiries to ZBA: *None*

Correspondence: Letter from Joel Maerten to Steve Long regarding PILOT payment for solar project on 6000 Donner Road.
 Letters from Kevin Schuler, Tony LaGambina and Andrew Bashor in support of project of Timothy Lukasik.
 Letters from Jennifer Warthling and Steven Tokarczyk in support of project of Kelly Jordan.
 Letters from Mary Korkuc and Kevin Geltz in support of project of Kevin & Jennifer Dexheimer.

Special Topics: *None*

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, July 28, 2020 at 7:00PM.

A motion was made by Dennis Welka to adjourn the meeting at 10:18 pm, and seconded by James Schlemmer. All voted in favor.

Submitted for:

Dennis J. Welka
Secretary

Attachments:

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

Town of Pendleton Denial of Building Application for Jennifer & Kevin
Dexheimer
Town of Pendleton Public Hearing Request for Jennifer & Kevin Dexheimer

Town of Pendleton Notice of Public Hearing for Jennifer & Kevin Dexheimer
Public Hearing Mailing List for Jennifer & Kevin Dexheimer
Site Survey of Property for Jennifer & Kevin Dexheimer
Renderings of Proposed Accessory Structure for Jennifer & Kevin Dexheimer

Town of Pendleton Public Hearing Request for Mr. Charles Dispenza
Town of Pendleton Notice of Public Hearing for Mr. Charles Dispenza
Town of Pendleton Denial of Building Application for Mr. Charles Dispenza
Public Hearing Mailing List for Mr. Charles Dispenza
Site Survey of Property for Mr. Charles Dispenza
Renderings of Proposed Accessory Structure for Charles Dispenza
Ag worksheet for Mr. Charles Dispenza

Town of Pendleton Public Hearing Request for Mr. Richard Scruggs
Town of Pendleton Notice of Public Hearing for Mr. Richard Scruggs
Town of Pendleton Denial of Building Application for Mr. Richard Scruggs
Public Hearing Mailing List for Richard Scruggs
Site Survey of Property for Mr. Richard Scruggs
Renderings of Proposed Accessory Structure for Mr Richard Scruggs

Town of Pendleton Public Hearing Request for Mrs. Kelly Jordan
Town of Pendleton Notice of Public Hearing for Mrs. Kelly Jordan
Town of Pendleton Denial of Building Application for Mrs. Kelly Jordan
Public Hearing Mailing List for Mrs. Kelly Jordan
Site Survey of Property for Mrs. Kelly Jordan
Pictures and Market Analysis for Mr. Nicolantonio's property by Miriam Treger

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

Town of Pendleton Public Hearing Request for Mr. Timothy Lukasik
Town of Pendleton Notice of Public Hearing for Mr. Timothy Lukasik
Town of Pendleton Denial of Building Application for Mr. Timothy Lukasik
Public Hearing Mailing List for Timothy Lukasik
Site Survey of Property for Mr. Timothy Lukasik
Renderings of Proposed Accessory Structure for Timothy Lukasik

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Hearing Sign-in Sheet for 6/23/20