

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS**  
**August 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 PM. ZBA members Mr. Buechler, Mr. Daigler (remote), Mr.Graves, Mr. Schlemmer, and Mr. Welka, as well as, Town Prosecutor Theodore Joerg attended the meeting.

**PUBLIC HEARINGS:**

**Benson, Diane**  
**5123 Mapleton Rd.**  
**Pendleton, NY 14094**

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a garage addition to the primary residence with a side yard setback of 10 ft. where minimum side yard setback of 15 ft. is required per Town Code §247-11.E. Area variance requested is 5 ft. side yard setback variance. Property is 100 ft. x 400 ft. and zoned R2 Medium-Density Residential.

David & Maria Kijowski, neighbors, spoke in favor of the variance.

The public hearing was closed at approximately 7:10 pm.

**DiPasquale, Daniel**  
**4674 Meyer Rd.**  
**Pendleton, NY 14094**

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a garage with area of 1,440 SF at a 10 ft. side yard setback where maximum size allowed is 543 SF and minimum side yard setback required is 15 ft. per Town Codes §247-10.I and §247-10.E, respectively. Area variances requested are 897 SF garage area variance and 5 ft. side yard setback variance. Property is 100 ft. x 1589 ft. (3.4 acres) and zoned R1 Low-Density Residential

The owner stated that the structure would be 30' x 48' and the building height would be 14' with the shorter building width facing road.

The public hearing was closed at approximately 7:22 pm.

**Sunbeam Laboratories, LLC**  
**6150 Donner Rd.**  
**Pendleton, NY 14094**

Owner is requesting an appeal from a Notice of Violation dated 22 July 2020 and a Stop Work Order dated 5 August 2020. Parcel is 8.3 acres and zoned LI Light Industrial.

The ZBA received a letter from Mindy Zoghlin of Zoghlin Group PLLC, representative for Sunbeam Laboratories LLC, requesting an adjournment of the hearing to the 22 September 2020 meeting date.

A motion was made by Mr. Welka and seconded by Mr. Buechler to postpone the public hearing until the 22 September 2020 meeting based on the request of the applicant's attorney. All voted in favor.

**Cappello, Ronald (Gasper Fulfaro, Agent)**  
**5532 Killian Rd.**  
**Pendleton, NY 14120**

Continuation of public hearing on hold per mutual agreement with applicant.

A motion was made by Mr. Welka and seconded by Mr. Schlemmer to withdraw the Town of Pendleton Zoning Board of Appeal's agreement and consent to further continuation of the public hearing and to conduct the public hearing and arguments for this area variance hearing on the agenda for the 22 September 2020 meeting. All voted in favor.

**REGULAR ZBA MEETING:**

***Review Minutes from Prior Meeting:***

A motion was made by James Schlemmer to accept the minutes of the July 28, 2019 meeting, and was seconded by Nick Graves. All voted in favor.

***Specific Board Deliberation Actions:***

**Benson, Diane - 5123 Mapleton Rd.** Owner wishes to construct a garage addition to the primary residence with a side yard setback of 10 ft. where minimum side yard setback of 15 ft. is required per Town Code §247-11.E. Area variance requested is 5 ft. side yard setback variance. Property is 100 ft. x 400 ft. and zoned R2 Medium-Density Residential

The ZBA board reviewed the side setback variance request for the 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 felt that the variance would not result in an undesirable change to the character of the neighborhood nor be detrimental to nearby property.

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

Alternative solutions were discussed but applicant stated that there were no other options.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial - 1/3 of distance allowed by 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 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. Daigler to grant the proposed variance request conditioned on completion of the project in one year. The motion was seconded by Mr. Schlemmer. Mr. Daigler, Mr. Schlemmer, Mr. Graves, and Mr. Buechler voted in favor. Mr. Welka voted against.

**DiPasquale, Daniel - 4674 Meyer Rd.** Owner wishes to construct a garage with area of 1,440 SF at a 10 ft. side yard setback where maximum size allowed is 543 SF. and minimum side yard setback required is 15 ft. per Town Codes §247-10.I and §247-10.E, respectively. Area variances requested are 897 SF garage area variance and 5 ft. side yard setback variance. Property is 100 ft. x 1589 ft. (3.4 acres) and zoned R1 Low-Density Residential

The owner stated that the structure would be 30' x 48' and the building height would be 14' with the shorter building width facing road.

The ZBA board reviewed the Area Variance front 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?

The Board felt that the requested setback would impact the character of the neighborhood, especially considering that the proposed structure would be disproportional to the size of his house

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

It was agreed that the side setback should be compliant with code. The Board considered the alternative of a compliant 1200 SF accessory structure at 150 ft. front yard setback.

## c. Is the requested variance substantial?

It was agreed that both variance requests were substantial. The Board contrasted the requested garage area variance vs. what might be required for an accessory structure more compliant with the 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 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. Buechler to deny the proposed side setback variance. The motion was seconded by Mr. Schlemmer. All voted in favor of denial.

A motion was made by Mr. Graves to approve a garage area variance of 897 SF (allowing a 1440 SF structure) conditioned on a one year time limit on completion of the project, removal of the existing garage and shed, a maximum height of 16 ft., and a minimum front yard setback of 150 ft. The motion was seconded by Mr. Schlemmer. Mr. Daigler, Mr. Schlemmer, Mr. Graves, and Mr. Buechler voted in favor. Mr. Welka voted against.

**Dispenza, Charles – 6721 Aiken Rd.** Owner wishes to construct a 300 sq. ft. (approx.) egg storage/sales building at 45 ft. front yard setback where minimum allowed per Town Code §247-34.F.(2)(a) is 150 ft. Area variance requested is 105 ft. of accessory structure front yard setback variance. Property is 15 acres and zoned R1 Low-Density Residential.

Mr. Buechler reported on communications that had been received indicating the Dispenza property was unanimously recommended for inclusion in the Niagara County Ag District mapping by the Agricultural and Farmland Protection Board. This recommendation goes to the Niagara County Legislature for public hearing and vote by the Legislature.

A motion was made by Mr. Welka and seconded by Mr. Graves to table the decision for another month. All voted in favor.

***New Inquiries to ZBA:***        *None*

***Correspondence:***

Letter from Jeffery Palumbo re: Fulfaro case.  
 Letters from Mindy Zoghlin re: Sunbeam Laboratories  
 Email from Sue Kelly re: Fulfaro Case  
 Email from Jason Brosius re: Fulfaro Case  
 Email from Robert Somers re: Dispenza request  
 Email from Anthony Nemi re: Dispenza request  
 Email Minutes of AFPB Meeting 28 July 2020 re: Dispenza

Attachments:

Town of Pendleton Public Hearing Request for Daniel DiPasquale  
Town of Pendleton Notice of Public Hearing for Daniel DiPasquale  
Town of Pendleton Denial of Building Application for Daniel DiPasquale  
Public Hearing Mailing List for Daniel DiPasquale  
Site Survey of Property for Daniel DiPasquale

Town of Pendleton Public Hearing Request for Diane Benson  
Town of Pendleton Notice of Public Hearing for Diane Benson  
Town of Pendleton Denial of Building Application for Diane Benson  
Public Hearing Mailing List for Diane Benson  
Site Survey of Property for Diane Benson

Town of Pendleton Public Hearing Request for Sunbeam Laboratories  
Town of Pendleton Notice of Public Hearing for Sunbeam Laboratories  
Town of Pendleton Petition for a Variance for Sunbeam Laboratories  
Notice of Violation  
Stop Work Order  
Public Hearing Mailing List for Sunbeam Laboratories

***Special Topics:***        *None*

***Miscellaneous ZBA Topics:***

1. The next scheduled meeting will be on Tuesday, (date), at 7:00 pm.

A motion was made by Dennis Welka to adjourn the meeting at 8:59 pm, and seconded by Nick Graves. All voted in favor.

Submitted for:

Dennis J. Welka  
Secretary