

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
January 26, 2021 Meeting

Members:

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

The ZBA regular meeting was called to order by Mr. Wolfgang Buechler at 7:00 PM. ZBA members Mr. Buechler, Mr. Schlemmer, Mr. Graves and Mr. Welka were present at the meeting. Pendleton Town Prosecutor Theodore A. Joerg was also present at the meeting. No changes were made to the ZBA agenda submitted by Wolfgang Buechler.

PUBLIC HEARINGS:

SunBeam Laboratories, LLC
6150 Donner Road Lockport, NY 14094

SunBeam Laboratories, LLC is seeking relief from a notice of violation (NOV) dated November 23, 2020 issued by the Town Code Enforcement Officer in relation to Town Code §132-10, §247-14 and §247-32.

Town Ordinance Affected: §132-10, §247-14, §247-32

Variance Sought: Determination that NOV is illegal, null and void

Current Zoning: Light Industrial

Attending the public hearing were:

- Ms. Bridget O’Toole, Esq., Zoughlin Group – attorney for Sunbeam Laboratories, LLC. (attended remotely via teleconference)
- Mr. Claude Joerg, Esq., Pendleton Town Attorney
- Mr. John Sansone, Esq., Pendleton Town Prosecutor
- Mr. Joseph McCaffrey, Chairman Pendleton Planning Board
- Mr. Joseph Follendorf, Pendleton Code Enforcement Officer
- Mr. Chris Casacci, Owner of Sunbeam Laboratories, LLC.
- Mr. Scott Gassley, Owner of property at 6150 Donner Rd.

Ms. Bridget O’Toole, Esq., attorney for Sunbeam, Inc. presented arguments for relief of NOV. A copy of Sunbeam’s written submission is attached. See Zoughlin Group’s Letter to the Zoning Board of Appeals dated 17 December 2020.

Additionally, Ms. O’Toole stated that Sunbeam has removed all hazardous material that had been stored on the property external to the structure and that Sunbeam has not manufactured sanitizer or ethanol product for the prior 60 days as a show of good faith.

Mr. Claude Joerg, Town attorney, introduced Mr. Joseph McCaffrey, Chairman of the Town Planning Board. Mr. McCaffrey said that the existing site approval by the Planning Board was based on the facility being used as a warehouse only. He stated that, during the Planning Board's Site Plan Review, there was no discussion of the site being used for manufacturing, which would have generated a different SEQR review. He also stated that the Planning Board does not specifically deal with Occupancy Classifications.

Mr. John Sansone, Esq., Town Prosecutor, presented arguments supporting the Code Enforcement Officer's issuance of the NOV. A copy of Mr. Sansone's written submission is attached. See Letter to the Zoning Board of Appeals from John Sansone, Esq. and Theodore Joerg, Esq. dated 22 January 2021.

Mr. Joe Follendorf, Town CEO, stated that the November NOV only included existing violations that had not been remediated up to the time of his last access to the property in September 2020.

Mr. Chris Casacci, Sunbeam Laboratories, LLC owner, stated that a third party electrical inspector was hired to inspect the remediation of electrical items. A checklist of what was inspected was not presented at the hearing. Mr. Casacci added that Sunbeam had purchased fire foam for ethanol fire suppression, as well as, a firetruck for its application. However, the firetruck was being repaired and had not yet been available on site.

Mr. McCaffrey stated that a complete electrical design document would have been necessary to do a proper electrical inspection.

Mr. Follendorf stated that the inspection was based on an S2 building code and that an H3 code inspection would be different.

Mr. Gassley stated that he purchased the property on Donner Rd. after the first and second phases of the structure(s) were completed and was not involved in the Site Planning that was presented to the Town Planning Board.

The hearing was closed at 8:20 pm.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by James Schlemmer to accept the minutes of the December 22, 2020 meeting, and was seconded by Nick Graves. All voted in favor.

Specific Board Deliberation Actions:

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

A motion was made by Mr. Schlemmer to table the decision for the purpose of further research and fact finding. The motion was seconded by Mr. Graves. All voted in favor.

New Inquiries to ZBA:

None.

Correspondence:

Arguments from Sunbeam attorney, Bridget O’Toole, regarding Sunbeam Laboratories
Arguments from Town Prosecutor, John S. Sansone, regarding Sunbeam Laboratories

Special Topics:

- b. Set 2021 Schedule for Public Hearings and ZBA meetings. Meeting time set for 7:00 pm start.
- c. Reviewed Sign-in sheet
- c. Reviewed Request to Petition for a Variance
- d. Reappointment status – Schlemmer (current term expires 12/31/2021)
- f. Reviewed 2020 meeting attendance
- g. Reviewed referral requirement to Niagara County Planning Board
- h. Reviewed notification requirement to neighboring municipalities
- i. Reviewed Contact Info provided by Town Clerk

Miscellaneous ZBA Topics: None

The next scheduled meeting will be on Tuesday, February 23, 2021 at 7:00 pm.

A motion was made by James Schlemmer to adjourn the meeting at 9:23 pm, and seconded by Nick Graves. All voted in favor.

Attachments:

- Zoghlin Letter in Support of Sunbeam Application 17 December 2020
- Sign In Sheet for 1/26/21
- Arguments from Town Prosecutor, John S. Sansone, regarding Sunbeam Laboratories
- Arguments from Sunbeam attorney, Bridget O’Toole, regarding Sunbeam Laboratories

Submitted for:

Dennis J. Welka
Secretary