

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
February 23, 2021 Meeting

Members:

Wolfgang Buechler, Chairman
Nicholas Graves
Dennis Welka, Secretary

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

PUBLIC HEARINGS:

Arlington, Tim (on behalf of Howard Urban)
Property at Tonawanda Creek Rd. and Transit Rd.
Pendleton, NY 14094

Petitioner desires to construct a building wall longer than 25 ft. with 2 ft. offset where a minimum 4 ft. offset is required per Town Code §247-12.K.(9). Petitioner also desires to create 2.6 parking spaces per unit on a site where a minimum of 3 spaces per unit is required per Town Code §247-12.K.(18)(c). Area variances sought are 2 ft. wall offset variance and 0.4 parking space variance. Property is 12.92 acres and zoned CO2 Commercial.

Mr. Arlington provided site drawings to demonstrate the qualitative features of the exterior construction of the buildings, asserting that these mitigate not achieving the full 4 ft. wall offset.

Mr. Buechler commented on a conversation with Mr. Joe McCaffrey, Chairman Planning Board in advance of the ZBA meeting. Mr. McCaffrey had indicated that the Code's required offset has no structural significance but was intended for aesthetic purposes only. He also indicated that the Planning Board supported this variance request.

Mr. Arlington provided site drawings to delineate the location of planned parking. He also pointed out that the apartment structures will include both one bedroom and two bedroom units. His expectation was that the smaller units may not make the same demand on parking as larger units. Mr. Arlington also asserted that Pendleton's requirement of three spaces per unit was the strictest in this area, with most municipalities requiring only two spaces per unit. The ZBA members and Mr. Arlington discussed, at length, the likelihood of parking space being exceeded and overflowing out to Tonawanda Creek Rd.

Mr. Buechler mentioned that Mr. McCaffrey had also commented on the Planning Board's perspective with regards to parking spaces. The Planning Board wanted more than 2.0 parking

spaces per unit and chose to write the code as 3.0 spaces in order to guarantee that the result would be somewhere between 2 and 3 spaces per unit. He said this variance request matches that goal.

The hearing was closed at 7:25 pm.

Bannochie, Eric

7035 Bear Ridge Rd.
Pendleton, NY 14120

Owner wishes to construct a 30 ft. x 24 ft. (approx.) accessory structure at a side yard setback of 10 ft. where a minimum of 15 ft. side yard setback is required per Town Code §247-34.F.(3)(b). Area variance sought is 5 ft. side yard setback variance. Property is 2.75 acres and zoned R1 Low-Density Residential.

Mr. Bannochie provided site drawings with approximate location of the proposed structure and stated that the proposed location was intended to keep the rear property more open.

The hearing was closed at 7:45 pm.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Nick Graves to accept the minutes of the January 26, 2021 meeting, and was seconded by Wolfgang Buechler. All voted in favor.

Specific Board Deliberation Actions:

Arlington, Tim (on behalf of Howard Urban)

Property at Tonawanda Creek Rd. and Transit Rd.
Pendleton, NY 14094

Petitioner desires to construct a building wall longer than 25 ft. with 2 ft. offset where a minimum 4 ft. offset is required per Town Code §247-12.K.(9). Petitioner also desires to create 2.6 parking spaces per unit on a site where a minimum of 3 spaces per unit is required per Town Code §247-12.K.(18)(c).

The ZBA board reviewed the Variances for the proposed structures, 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?

Board felt that there would be no significant change in the characteristics of the neighborhood as a result of the proposed 2 ft. wall offset. The Board had some concerns about the impact if potential parking overflow caused people to park on Tonawanda Creek Rd.

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

It was agreed that there were no alternative solutions that were reasonable. A change in wall offset would require substantial redesign when the original aesthetic goals were being met with other architectural elements. Onsite parking expansion could be achieved but that would sacrifice green space allocation.

- c. Is the requested variance substantial?

It was agreed that the variance requests were 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 it would not have an adverse effect on the physical or environmental conditions in the neighborhood. The Planning Board produced a negative SEQR.

- 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. Graves to table the decision of the parking variance for the purpose of further research and seconded by Mr. Welka. All voted in favor.

A motion was made by Mr. Graves to grant the 2 ft. offset variance as requested. It was seconded by Mr. Welka. All voted in favor of the motion.

Bannochie, Eric

7035 Bear Ridge Rd.
Pendleton, NY 14120

Owner wishes to construct a 30 ft. x 24 ft. (approx.) accessory structure at a side yard setback of 10 ft. where a minimum of 15 ft. side yard setback is required per Town Code §247-34.F.(3)(b).

The ZBA board reviewed the Area Variance side 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?

Board felt that there would be a detriment to neighboring properties.

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

It was agreed that there were alternative solutions that were reasonable. The accessory structure had room on the lot to be conforming or a smaller structure could be built.

- 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. Welka to deny the variance request and seconded by Mr. Graves. All voted in favor of denying the request.

SunBeam Laboratories, LLC
6150 Donner Rd.
Pendleton, NY 14094

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

The Board discussed the following issues from the applicant's filing and the Town response:

- Code Enforcement Officer's Authority to enforce NYS Uniform Fire Prevention and Building Code and Town of Pendleton Zoning Codes
 - NYS Executive Law Section 382 regarding enforcement authority of municipality and authorized agents.
 - Town Code Sections 247-70.G – Secure warrants and prosecute violators of the provisions of this chapter.
 - Town Code Sections 247-70.H – Serve all notices that may be required to be served in connection with this chapter.
 - Town Code Section 247.72 – No building ... be occupied if changed in use until a certificate of occupancy has been issued by the Code Enforcement Officer.
- Change in Occupancy Level
 - New York State Office of Fire Prevention and Control's ("OFPC") site visit 22 July 2020.
 - New York State Homeland Security and Emergency Services - Report of Site Survey at Sunbeam Laboratories date 7 August 2020.
 - Violations noted in the Report of Site Survey.
 - Conclusion from Report of Site Survey that the activity of SunBeam Laboratories, LLC caused a change in occupancy from S-1 to H-3 without permit.
- Notice of Violation dated 23 November 2020
 - Based on information available to the Code Enforcement Officer during last site visit in September 2020
- Due Process

- Applicant’s failure to apply for proper permit to cover change of occupancy.
- Jurisdiction for appeals regarding NYS Uniform Fire Prevention and Building Code - the NY State Department of State Division of Building Standards and Codes website states “The procedures for variances and appeals regarding the New York State Uniform Fire Prevention and Building Code (Uniform Code) are established in 19 NYCRR Part 1205. ... Appeals always require a hearing before a [Regional] Board of Review.”
- For matters of Zoning – initial due process was to work with Code Enforcement Officer. Further due process option was appeal to ZBA which the applicant selected.
- Permitted Uses of Property
 - As part of the de novo review, the ZBA reviewed Town Code Section 247-11.C Uses Permitted by right, in LI District with respect to the activity of large scale ethanol distillation, blending, bottling, and private labeling of SunBeam Laboratories, LLC.

A motion was made by Mr. Wolfgang Buechler and seconded by Mr. Nick Graves to affirm the Notice of Violation from the Pendleton Code Enforcement Officer dated 23 November 2020

ZBA members Mr. Wolfgang Buechler, Mr. Nick Graves, and Mr. Dennis Welka voted in favor of the motion and no member voted against the motion,

An additional motion was made by Mr. Wolfgang Buechler and seconded by Mr. Dennis Welka that the ZBA determine that the SunBeam Laboratories, LLC use of the property at 6150 Donner Road, Pendleton NY for large scale ethanol distillation, blending, bottling, and private labeling is not a permitted use under the Light Industrial District zoning of the property.

ZBA members Mr. Wolfgang Buechler, Mr. Nick Graves, and Mr. Dennis Welka voted in favor of the motion and no member voted against the motion

New Inquiries to ZBA:

None.

Correspondence:

None

Special Topics:

None

Miscellaneous ZBA Topics: None

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

A motion was made by Nick Graves to adjourn the meeting at 8:40 pm., and seconded by Dennis Welka. All voted in favor.

Attachments:

Sign In Sheet for 2/23/21

Town of Pendleton Public Hearing Request for Tim Arlington
Town of Pendleton Notice of Public Hearing for Tim Arlington
Town of Pendleton Denial of Building Application for Tim Arlington
Public Hearing Mailing List for Tim Arlington
Project renderings for Tim Arlington
Site Survey of Property for Tim Arlington

Town of Pendleton Public Hearing Request for Bannochie, Eric
Town of Pendleton Notice of Public Hearing for Bannochie, Eric
Town of Pendleton Denial of Building Application for Bannochie, Eric
Public Hearing Mailing List for Bannochie, Eric
Project renderings for Bannochie, Eric
Site Survey of Property for Bannochie, Eric

Exhibit A
Exhibit B
Exhibit C

Submitted for:

Dennis J. Welka
Secretary