

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS**  
**June 22, 2021 Meeting**

**Members:**

Wolfgang Buechler, Chairman  
David Kantor  
James Schlemmer  
Nicholas Graves  
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. Schlemmer, Mr. Kantor, Mr. Graves and Mr. Welka were present at the meeting. Pendleton Town Prosecutor Theodore A. Joerg, Esq. was also present at the meeting. There were no changes to the agenda.

**PUBLIC HEARINGS:**

**Dunnigan Solar Road 1 LLC (c/o Borego Solar Systems, Inc.)  
6100 Dunnigan Rd.  
Pendleton, NY**

Applicant, on behalf of owner, is requesting an area variance to install a large-scale solar energy system with a lot coverage factor of 36.1% where maximum allowed is 25% per Town Code §247-68.22A.(3)(c). Area variance sought is 11.1% large-scale solar energy system lot coverage variance. Property is approx. 36 acres and mix-zoned CO-2 Medium Commercial, LI Light Industrial, and R2 Medium-Density Residential.

The property owner, Ray Ruhlmann, attended the meeting remotely via telephone conference.

Applicant stated that variance was required to insure profitability of project since an installation with smaller, compliant footprint would not provide enough return to offset the cost. Marc Kenward, the presenter and Steve Long of Apex Consulting read a letter from their lawyer, Mr. Fitzgerald, stating reasons why variance should be granted.

Nicholas Malinowski, a neighbor, had concerns regarding the life expectancy of the panels and the scenarios possible if the project needs to be replaced or decommissioned.

Kelli Coughlin, a neighbor, had no objection to the project and stated that she preferred this use of the neighboring property as opposed to other possible LI uses.

Ray Ruhlman, property owner, stated that he has many parcels of non-contiguous land in the Lockport/Pendleton area and that a solar project on this property would provide more return than farming. He also stated that this additional revenue source would benefit his farming activity overall.

The public hearing was closed at approximately 7:35 p.m.

**Jacus, Carmen and Louis  
7227 Bear Ridge Rd.  
Pendleton, NY**

Applicants seek to create, via subdivision, a buildable lot having width of 96.5 ft. where a legal buildable lot requires a minimum width of 100 ft. per Town Code §247-11C.(2). Area variance sought is 3.5 ft. lot width variance. Property, before subdivision, is approx. 10 acres and zoned R2 Medium-Density Residential.

Mr. Schlemmer recused himself from the hearing, deliberation, and voting since he was related to the applicant.

Owner stated that he wishes to create a subdivision off of Creekbend Drive in the rear of his property which fronts Bear Ridge Road.

Mr. Joseph Beale of 7272 Creekbend stated that there would be a violation of Town Code 220-24 Sect.1 regarding the length of a dead end street.

Mr. Scott Farley of 7264 Creekbend had concerns of proposed subdivision fitting the character of the existing neighborhood. He suggested the lots proposed be fewer with greater frontage.

Kelli Coughlin made statements diminishing the value of the existing neighborhood stating that the owners over valued their properties and that the builders in the development were not that good.

David Strout was opposed to this project and stated that it would create water runoff problems for neighboring properties.

Mr. Buechler commented that the topic before the ZBA is solely that of a variance for one lot width and that some of the public comments were not topics within the jurisdiction of the ZBA but were appropriate for the public to discuss with the Planning Board during review of the subdivision application.

Nick Malinowski inquired regarding the meeting time and date of the Planning Board regarding this property. Information was provided and direction was given to the Pendleton website.

The public hearing was closed at approximately 8:10 p.m.

**REGULAR ZBA MEETING:**

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

A motion was made by Nick Graves to accept the minutes of the May 25, 2021 meeting, and was seconded by Jim Schlemmer. All voted in favor.

***Specific Board Deliberation Actions:***

**Dunnigan Solar Road 1 LLC (c/o Borego Solar Systems, Inc.), 6100 Dunnigan Rd., Pendleton, NY**

The ZBA board reviewed the Area Variance considerations 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 there would be a detriment to neighboring properties in the sense that the Town Board specifically enacted this recent code section in consideration of mitigating impact on neighboring properties

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

It was agreed that the alternative solution would be to be compliant. The applicant stated that acquiring additional land was not possible.

- c. Is the requested variance substantial?

It was agreed that the variance request was substantial. Proposed lot coverage is 44% over allowed maximum

- 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?

Yes, because the applicant chose to proceed with the project knowing that the size of the property would be non-conforming.

Mr.Kantor moved to deny variance as requested. Mr. Welka seconded the motion. Mr. Buechler, Mr. Kantor, Mr. Schlemmer, and Mr. Welka voting in favor of the motion to deny the requested variance. Mr. Graves voted against the motion to deny.

The request for an 11.1% large-scale solar energy system lot coverage variance was denied.

**Jacus, Carmen and Louis, 7227 Bear Ridge Rd., Pendleton NY**

Mr. Buechler stated prior to deliberation that the authority of the ZBA is limited to discussing the variance presented only.

The ZBA board reviewed the Area Variance considerations 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 not be a detriment to adjoining lots as proposed, both within the proposed subdivision and the existing Creekbend neighborhood.

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

It was agreed that the alternative solution would be to be to eliminate one lot to provide options for compliant lot widths throughout the proposed subdivision.

- 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 itself would not have an adverse effect on the physical or environmental conditions in the neighborhood.

- e. Is the applicant's difficulty self-created?

Yes, because the applicant chose to proceed with the project knowing that the size of the property would be non-conforming.

Mr. Graves moved to grant the variance as requested for a single lot of the proposed subdivision. Mr. Kantor seconded the motion. Mr. Buechler, Mr. Graves, and Mr. Kantor voted in of the motion and Mr. Welka voted against.

Request for lot width variance of 3.5 ft. was granted for a single lot of the proposed multi-lot subdivision. All normal Planning Board subdivision review processes still apply.

**Panasyuk, Aleksandr**  
**6121 Campbell Blvd.,**  
**Pendleton NY (hearing held 27 April 2021)**

Owner wishes to construct a 40' x 100' accessory structure totaling 4000 SF whereas maximum accessory structure size allowed is 2000 SF on a parcel over 7 acres per Town Code 247-34E(3). Size of parcel is 136 ft. x 3300 ft. (approx. 30 acres) and is zoned R-2 Residential.

The applicant had informed the ZBA Chairman via telephone conversation that he is pursuing agricultural status which would make this variance requirement moot.

Mr. Buechler moved to close the request without decision. Mr. Schlemmer seconded the motion. All members voted in favor of the motion to close the request.

The Zoning Board of Appeals has closed this request without decision.

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

***Correspondence: None***

***Special Topics: None***

***Miscellaneous ZBA Topics:***

1. The next scheduled meeting will be on Tuesday, July 27, 2021, at 7:00PM.

A motion was made by Jim Schlemmer to adjourn the meeting at 9:18 pm, and seconded by Nick Graves. All voted in favor.

Attachments:

Sign In Sheet for 6/22/21

Town of Pendleton Public Hearing Request for Dunnigan Road Solar, LLC  
Town of Pendleton Notice of Public Hearing for Dunnigan Road Solar, LLC  
Town of Pendleton Denial of Building Application for Dunnigan Road Solar, LLC  
Public Hearing Mailing List for Dunnigan Road Solar, LLC  
Site Survey of Property for Dunnigan Road Solar, LLC  
Short Environmental Assessment Form  
Letter from Edward Fitzgerald, Esq.  
Solar Permit Application  
Letter from Mr. Ruhlman, owner  
Barrett Energy Resources Group Executive Summary

Town of Pendleton Notice of Public Hearing for Carmen and Louis Jacus  
Town of Pendleton Denial of Building Application for Carmen and Louis Jacus  
Public Hearing Mailing List for Carmen and Louis Jacus  
Site Survey of Property for Carmen and Louis Jacus

Submitted by:

Dennis J. Welka  
Secretary