

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS**  
**9/28/2021 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 Messrs. Buechler, Kantor, Graves, and Welka were present at the meeting. Mr. Schlemmer was excused. Pendleton Town Prosecutor Theodore A. Joerg, Esq. was also present.

**PUBLIC HEARINGS:**

**Riedy, Joseph and Nicole – 7216 Creekbend Dr.**

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 500 SF accessory structure at a 10 ft. side yard setback where a minimum side yard setback of 15 ft. is required per Town Code §247-34.F(2)(b). Area variance sought is 5 ft. side yard setback variance. Property is 0.70 acres and zoned R2 Medium-Density

Mr. Riedy stated that the structure would serve as the pool house. He stated that the side setback was necessary due to constrictions of the wetlands and buffer zones on his property and that placing the structure at a compliant location would cut off paths through the rear of the yard around the proposed pool. Additionally, the property drops off to the rear further complicating location of the structure at a compliant setback and behind the pool.

The front setback of 150 ft. was brought into question by Mr. Welka and Mr. Kantor. Mr. Riedy was not certain where the front setback actually was and it was not clear to the ZBA members how the survey reflected the location of the front Right of Way.

The public hearing was closed at approximately 7:12 pm.

**Alex, Christopher and Danielle – 4932 Devonshire Ln.**

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to accommodate an existing pool filter system at 11 ft. property boundary setback where a minimum setback of 15 ft. is required per Town Code §222-2.D. Area variance sought is 4 ft. property setback variance. Property is 100 ft. x 256 ft. and zoned R2 Medium-Density Residential.

The owners stated that the pool was installed in 2015 and was granted a permit and inspected by the Building Dept. They had been told that it was the pool company's standard practice to locate pool filters on the side of the house near the incoming gas line and that this specific installation had not been an issue for six years. The owners claim that the neighbor's complaint is retaliation for the Alex's recent complaint about an accessory side yard setback violation after the neighbor

moved his shed close to their shared property line. Mr. Blossom, the neighbor in question, said that he just wants the code upheld. Mr. Giordina, who lives across the street stated that in the entire development the houses are too close to each other at a minimal side setback.

The public hearing was closed at approximately 7:35 pm.

**Barbalato, Anthony – 4126 Mapleton Rd.**

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 1,792 SF accessory structure at a side yard setback of 3 ft. where the maximum size allowed is 1200 SF per Town Code §247-34.E(2) and minimum side yard setback required is 15 ft. per Town Code §247-34.F.(3)(b). Property is 3.12 acres and zoned R2 Medium-Density Residential.

It was noted that the agenda should read that the side yard setback is 6.75 ft and not 3 ft.

Mr. Barbalato stated that the proposed structure would be 30 ft. by 59.5 ft. with a height of 17 ft. He wants to place it directly behind an existing barn that belongs to his neighbor. He purchased that piece of property from his neighbor for that sole purpose. The size request is to cover storage of numerous items that are currently kept outside in the area adjacent to the primary residence. The setback request is to ensure that the eastern edge of the structure lines up with the similar side of the neighbor's existing structure to allow for a straight stone drive on Mr. Barbalato's property for access.

The public hearing was closed at approximately 7:48 pm.

**REGULAR ZBA MEETING:**

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

A motion was made by Mr. Welka to accept the minutes of the 8/27/21 meeting, and was seconded by Mr. Buechler. All voted in favor.

***Specific Board Deliberation Actions:***

**Riedy, Joseph and Nicole – 7216 Creekbend Dr.**

The ZBA members resumed the discussion about the whether the proposed location might also need a front yard setback variance request.

Mr. Welka made a motion to table the deliberation until the owner could accurately determine the front yard setback and decide if a second variance request would be required. The motion was seconded by Mr. Kantor and passed unanimously by the members present.

**Alex, Christopher and Danielle – 4932 Devonshire Ln.**

The ZBA members discussed the character of the neighborhood with respect to the R2 Zoning minimum lot widths of 100 ft. The ZBA members also discussed the length of time this equipment has been installed without complaint.

The ZBA board reviewed the Area Variance property setback of the pool equipment, 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 the granting of the variance would not create an undesirable change to the neighborhood and nearby properties as the location of the pool pump is relatively hidden by shrubbery, is typical of many installations in the area, and has been present for almost six years.

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

It was agreed that the alternative solution would be to relocate the pump but that would not be practical without significant impact to the property.

- c. Is the requested variance substantial?

It was agreed that the requested 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 and has not been a problem for the last 6 years.

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

It was agreed that the applicant's difficulty was not self-created since the owner relied upon the expertise of the pool company and the permitting/review process of the Town's Building Dept.

A motion was made by Mr. Welka to grant the variance. The motion was seconded by Mr. Kantor. Messrs. Buechler, Welka, and Kantor voted in favor. Mr. Graves was opposed. The variance was granted by a vote of 3-1.

**Barbalato, Anthony – 4126 Mapleton Rd.**

It was noted that the agenda should read that the side yard setback is 6.75 ft and not 3 ft.

The ZBA board reviewed the Area Variance tests for the area and side yard setback of the proposed 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 the granting of the variance would not create an undesirable change to the neighborhood and nearby properties as the structure would be located exactly to the rear of an existing structure of comparable size.

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

It was agreed that the alternative solution would be to build a structure compliant with the code’s size requirement. It could then be placed at a compliant setback and still achieve the proposed eastern alignment.

- c. Is the requested variance substantial?

It was agreed that both requested variances were 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 .

A motion was made by Mr. Graves to grant the size variance for the structure with a one-year time limit. The motion was seconded by Mr. Kantor. Messrs. Buechler, Graves, and Kantor voted in favor. Mr. Welka was opposed. The Variance was granted by a vote of 3-1.

A motion was made by Mr. Kantor to grant the side lot variance. The motion was seconded by Mr. Graves. Messrs. Buechler, Graves, and Kantor voted in favor. Mr. Welka was opposed. The Variance was granted by a vote of 3-1.

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

***Correspondence: None***

***Special Topics: None***

***Miscellaneous ZBA Topics:***

1. The next scheduled meeting will be on Tuesday, 10/26/21, at 7:00PM.

A motion was made by Mr. Graves to adjourn the meeting at 9:00 pm, and seconded by Mr. Kantor. All voted in favor.

Submitted for:

Dennis J. Welka  
Secretary

Attachments:

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

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

Town of Pendleton Public Hearing Request for Anthony Barbalato  
Town of Pendleton Notice of Public Hearing for Anthony Barbalato  
Town of Pendleton Petition for a Variance for Anthony Barbalato  
Site Survey of Property for Anthony Barbalato  
Public Hearing Mailing List for Anthony Barbalato