

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
12/28/2021 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 Wolfgang Buechler, David Kantor, James Schlemmer, Nicholas Graves, and Dennis Welka were present at the meeting. Mr. Theodore Jeorg, town attorney attended remotely via teleconference.

PUBLIC HEARINGS:

Doherty, Stephan - 5138 Tonawanda Creek Rd., Pendleton, NY (Continued from 23 November 2021)

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 1520 SF detached garage where the maximum detached garage size is 1200 SF per Town Code §247-11.I. Area variance sought is 320 SF detached garage size variance. Property is 125 ft. x 258 ft. and zoned R2 Medium-Density Residential.

Mr. Doherty proposes a 30 ft. x 40 ft. (1200 SF) enclosed structure with an additional 8 ft. x 40 ft. open overhang section facing the center of his property. Total proposed structure area is 1520 SF. Mr. Doherty proposes removing an existing structure from the property. His stated objective is to increase his storage space both inside and under cover of the overhang as he currently has minimal storage space in his house.

Brian Bamberg, the neighbor to the west, had attended the December ZBA meeting and stated his only concern was that any open storage area face away from his property.

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

Culligan, Bruce - 5408 Oakwood Dr., Pendleton, NY

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 960 SF accessory structure (40 ft. x 24 ft.) where the maximum accessory structure size allowed is 600 SF per Town Code §247-34.E.(1). Owner also wishes to place the accessory structure 10 ft. from the side property line where minimum side yard setback is 15 ft. per Town Code §247-34.F.(2)(b). Area variances sought are 360 SF accessory structure size variance and 5 ft. side yard setback variance. Property is 100 ft. x 375 ft. and zoned R2 Medium-Density Residential.

Mr. Culligan proposes to build a 960 SF pole barn at a 10 ft. side yard setback and a height of approximately 14-16 ft. Mr. Culligan proposes to remove the existing accessory structure. He also stated that the final location for the structure is not yet decided, but if he places it to the very rear of his property, he may not need the 5 ft. side yard setback variance. Mr. Culligan further stated that he plans to tie the structure's water runoff into the existing storm water system to prevent a drainage problem on his and his neighbor's property. Finally, Mr. Culligan mentioned plans to create a visual barrier between the structure and neighboring property with plantings.

Neighbors Norman and Sharyn Foit attended the hearing to better understand the project. They also expressed concern about potential drainage problems.

The public hearing was closed at approximately 7:30 pm.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by James Schlemmer to accept the minutes of the 11/23/2021 meeting, and was seconded by Nick Graves. All voted in favor.

Specific Board Deliberation Actions:

Doherty, Stephan - 5138 Tonawanda Creek Rd., Pendleton, NY

The ZBA board reviewed the Area Variance request 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. The board took into consideration the large front yard setback proposed by the applicant.

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

It was agreed that the alternative solution would be to build to code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial. Discussion involved the proportional size of the structure with respect to the primary residence.

- 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?

The applicant's difficulty was self-created.

David Kantor made a motion to approve the variance as requested, contingent on a one year time limit on completion of the project, on the placement of the structure at the proposed location, on orientation of the overhang area toward the center of the property, and on the removal of the existing garage structure. The motion was seconded by James Schlemmer.

Voting in favor of the motion: Wolfgang Buechler, Dave Kantor, James Schlemmer, and Nick Graves. Opposed: Dennis Welka
Variance was granted.

Culligan, Bruce - 5408 Oakwood Dr., Pendleton, NY

Discussion involved a negative opinion toward granting a side lot variance since the structure could be located on the property at a compliant side yard setback. Drainage issues were also discussed.

The ZBA board reviewed the Area Variance 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. However, the use of the property was limited to approximately one-third of the property's actual size due to large culverts located in the front of the property.

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

It was agreed that the alternative solution would be to build to code.

- c. Is the requested variance substantial?

It was agreed that the requested variance 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 the variance might create drainage issues if not addressed as proposed during the hearing.

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

The board felt that the applicant's difficulty was self-created.

The variances requested were considered separately as follows.

A motion was made by Dave Kantor to deny the side yard setback. The motion was seconded by Nick Graves.

All voted in favor of the motion to deny. Side lot variance was denied.

A motion was made by Nick Graves and seconded by Dave Kantor to approve the area variance contingent on a one year time limit for completion of the project, on the applicant removing the existing accessory structure, and on the applicant channeling runoff water through the existing storm water drainage system.

Voting in favor of the motion: Wolfgang Buechler, Dave Kantor, James Schlemmer, Nick Graves. Opposed: Dennis Welka. Accessory structure area variance was granted.

New Inquiries to ZBA: None

Correspondence: None

Special Topics: None

Miscellaneous ZBA Topics:

1. The next scheduled meeting will be on Tuesday, 1/25/2022 at 7:00 pm.

A motion was made by James Schlemmer to adjourn the meeting at 8:30 pm, and seconded by Dave Kantor. All voted in favor.

Submitted by:

Dennis J. Welka
Secretary

Attachments:

- Town of Pendleton Public Hearing Request for Stephan Doherty
- Town of Pendleton Notice of Public Hearing for Stephan Doherty
- Town of Pendleton Denial of Building Application for Stephan Doherty
- Public Hearing Mailing List for Stephan Doherty
- Site Survey of Property for Stephan Doherty
- Town of Pendleton Public Hearing Request for Bruce Culligan
- Town of Pendleton Notice of Public Hearing for Bruce Culligan
- Town of Pendleton Denial of Building Application for Bruce Culligan
- Public Hearing Mailing List for Bruce Culligan
- Site Survey of Property for Bruce Culligan

Sign in Sheet