

TOWN OF PENDLETON
ZONING BOARD OF APPEALS
06/28/2022 Meeting

Members:

Wolfgang Buechler, Chairman
David Kantor
Jonathan Welka
Nicholas Graves
Dennis Welka, Secretary

The ZBA open regular meeting was called to order by Mr. Buechler at 7:00 pm. ZBA members David Kantor, Wolfgang Buechler, Jonathan Welka and Dennis Welka were present at the meeting. Nicholas Graves was excused. Mr. Theodore Joerg, Esq., Pendleton Town Prosecutor, and Ron Dietrich, Building Inspector, were also present.

PUBLIC HEARINGS:

Huff, Alan, H. Sr. – (property located at 6400 Campbell Blvd, Pendleton NY)

Owner wishes to construct on or develop a parcel of land that does not meet the required minimum lot width of 200 feet per Town Code §247-12.F. Property is 1.5 acres and zoned CO1 Light Commercial. Area variance sought is relief from minimum lot width requirement of 200 ft.

Applicant stated that he wants to develop this parcel of land for commercial use compliant with code for CO1.

Attending the meeting were:

- Mr. Huff, the applicant
- Mr. Goldberg, attorney for Mr. Huff
- Mr. Hebler, owner of neighboring property
- Ms. Tiveron, attorney for Mr. Hebler

Applicant stated that he purchased a portion of a larger lot from the prior owner outside of the required subdivision process with the Pendleton Town Planning Board. The property deed was filed with Niagara County Clerk's Office in 2019. Mr. Goldberg presented arguments in support of the application for variance from the minimum lot width requirement for property in CO1 zoning district.

Ms. Tiveron stated that Mr. Hebler, who had purchased the remaining section of the prior lot, believes that he owns part, or all, of the property subject to the variance request.

Since ownership of the property was in dispute and raised a question of standing for filing the variance request, a motion was made by W. Buechler and seconded by D. Welka to table the public hearing until ownership and standing can be resolved.

Ms. Tiveron committed to providing written argument supporting Mr. Hebler's claim to the property to the ZBA by 18 July 2022 and Mr. Goldberg committed to providing response to the ZBA by 20 July 2022.

Voting in favor of the motion to table the public hearing: Buechler, Kantor, J. Welka, D. Welka

Voting against: None

The public hearing was tabled at approximately 7:43 pm.

Wendt, Aaron – 5333 Oakwood Dr, Pendleton NY

Application for variance of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 728 SF accessory structure (pole barn) where the maximum accessory structure size allowed is 600 SF per Town Code §247-34.E.(1). Applicant also wishes to place the structure at a 5 ft. side yard setback where the minimum side yard setback allowed is 15 ft. per Town Code §247-34.F.(2)(b). Property is 100 ft. x 276.44 ft. and zoned R2 Medium-Density Residential. Area variances sought are 128 SF accessory structure size variance and 10 ft. side setback variance.

The owner stated that he wishes to have more storage space and he plans to remove an existing 10' x 12' shed.

Dennis and Florence Gilbert, owners of the property to the side (driveway) and rear of Mr. Dunn's property, spoke to the drainage available near their driveway and felt it was adequate to handle runoff from the proposed structure.

The public hearing was closed at approximately 7:57 pm.

Hitzges, Tim – 4758 Beach Ridge Rd, Pendleton NY

Application for variance of the provisions of the Zoning ordinance of the Town of Pendleton to construct an addition to his 2,168 SF accessory structure for a new total area of 4,528 SF where the maximum accessory structure size allowed is 2,000 SF per Town Code §247-34.E.(3). Property is 600 ft. wide and totals 42.3 acres. Property is zoned R2 Medium-Density Residential. Area variance sought is 2,528 SF accessory structure size variance.

Applicant explained that his current accessory structure houses some cars and his tools and the second story is used for storage. He stated that he needs storage space for two tractors and some cars. He also stated that a smaller structure would not accomplish his objectives.

The public hearing was closed at approximately 8:17 pm

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by David Kantor to accept the minutes of the 05/24/2022 meeting, and was seconded by Dennis Welka. All voted in favor.

Changes to the Agenda:

- 1) Change second requested variance for Aaron Wendt from “accessory structure size variance” to “side setback variance”.

Specific Board Deliberation Actions:

Wendt, Aaron – 5333 Oakwood Dr, Pendleton NY

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?

With regards to the size – No

With regards to the side lot setback - Yes

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

Build to code

- c. Is the requested variance substantial?

The Board felt that the size request was not substantial but that the side lot setback was substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

Unknown

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

Yes

The motion was made by Dave Kantor to approve both variances with a one year time limit and the removal of the existing shed. The motion was seconded by Jonathan Welka.

Voting in favor: Buechler, Kantor, and J. Welka

Voting against: D. Welka

Hitzges, Tim – 4758 Beach Ridge Rd, Pendleton NY

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 felt that the variance request was excessive.

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

Build to code.

- c. Is the requested variance substantial?

The Board felt that the size request was substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

Unknown

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

Yes

The motion was made by J. Welka to deny the request as written. The motion was seconded by D. Kantor.

Voting in favor of the motion to deny: Buechler, Kantor, J. Welka, and D. Welka

Voting against: None

Sattleburg, John – 6652 Aiken Rd, Pendleton NY (public hearing held 24 May 2022)

Application for variance of the provisions of the Zoning ordinance of the Town of Pendleton. Owner requests a variance to allow a second 12 ft. x 24 ft. (288 SF) accessory structure to remain on property. There is currently a 1200 SF pole barn on the property per a variance granted to the home’s previous owner in 2003. The maximum aggregate accessory structure size allowed is 600 SF per Town Code §247-34.E.(1). Property is 80.38 ft. x 300 ft. and zoned R2 Medium-density Residential. Additional area variance sought is 288 SF accessory structure size variance in addition to the existing accessory structure size variance of 600 SF.

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 did not feel the structure impacted the character of the neighborhood, especially considering the lack of visibility of the smaller structure from multiple viewpoints and its current placement on the property.

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

No, only removal of the existing smaller building would eliminate the need for variance.

- c. Is the requested variance substantial?

The Board felt that the request was substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

Unknown

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

Yes

A motion was made by Mr. J. Welka to grant the requested variance, conditioned on restriction of the variance to the structures presently constructed and as they currently are situated on the property. Mr. D. Welka seconded the motion.

Voting in favor: Buechler, Kantor, J. Welka, and D. Welka

Voting against: None

Zielen, John – 5543 Irish Rd, Pendleton NY (public hearing held 24 May 2022)

Application for variance of the provisions of the Zoning ordinance of the Town of Pendleton. Owner wishes to construct a 30 ft. x 40 ft. accessory structure at a 5 ft. side yard setback where minimum side yard setback allowed is 15 ft. per Town Code §247-34.F.(3)(b). Property is 102 ft. x 861 ft. (approx. 2.1 acres) and zoned R2 Medium-density Residential. Area variance sought is 10 ft. side yard setback variance.

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 felt that proposed placement would have the least impact on the character of the neighborhood. The alternative, compliant placement of the structure would have more impact on the current neighbor.

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

Build to code. However, this option has more visual impact on existing neighbor.

- c. Is the requested variance substantial?

The Board felt that the request was substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

Unknown

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

Yes

Motion made by Mr. J. Welka to grant the requested variance, conditioned on a one-year time limit for completion of the project and on removal of the existing accessory structure. Mr. D. Welka seconded the motion.

Voting in favor: Buechler, Kantor, J. Welka, and D. Welka

Voting against: None

Demmin, James – 5840 Donner Rd, Pendleton NY (public hearing held 24 May 2022)

Application for variance of the provisions of the Zoning ordinance of the Town of Pendleton. Owner wishes to construct a 24 ft. x 30 ft. detached garage at a 40 ft. front yard setback where the minimum setback allowed is 100 ft. per Town Code §247-11.D.(1). Property is 1.26 acres and zoned R2 Medium-density Residential. Area variance sought is 60 ft. front yard setback variance for detached garage.

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 felt that the request was not out of character with the neighborhood. Specifically, the Board considered the proximity of the primary residence to the right of way and the placement of the garage with respect to that residence.

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

Build to code with exceptions due to topography.

- c. Is the requested variance substantial?

The Board felt that the request was substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

Unknown

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

Yes

A motion was made by D. Kantor and seconded by W. Buechler to grant a 60’ front yard setback variance with a one-year time limit on completion.

Voting in favor: Buechler, Kantor, J. Welka, and D. Welka

Voting against: None

Dunn, Matt – 4904 Mapleton Rd (public hearing held 24 May 2022)

Applicant wishes to construct a 50 ft. x 60 ft. (3,000 SF) accessory structure on a parcel resulting from a proposed subdivision. Maximum accessory structure size allowed on the proposed parcel is 1200 SF per Town Code §247-34.E.(2). Also, an accessory structure is subordinate to the main residence and would not be allowed until a residence is constructed on the proposed parcel. Proposed lot will be under 7 acres and zoned R2 Medium-Density Residential. Area variance sought is 2800 SF accessory structure size variance.

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?

Applicant stated that the planned residence will be approximately 2700 SF.

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

Build to code

- c. Is the requested variance substantial?

The Board felt that the size request was substantial.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

Unknown

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

Yes

A motion was made by D.Kantor and seconded by W.Buechler to grant an accessory structure size variance of 1300 SF for a total building size of 2500 SF with a two year time limit on construction.

Voting in favor: Buechler, Kantor,

Voting against: J. Welka, D. Welka

Decision is on hold till next meeting.

New Inquiries to ZBA: None

Correspondence: None

Special Topics: None

Miscellaneous ZBA Topics:

1. The next scheduled ZBA meeting will be on Tuesday, 7/26/2022 at 7:00 pm.

A motion was made by D Welka to adjourn the meeting at 9:45 pm and seconded by W Buechler. All voted in favor.

Submitted for:

Dennis J. Welka
Secretary

Attachments:

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

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

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

Sign-in Sheet