

Town of Pendleton, NY
Zoning Board of Appeals (ZBA)
Meeting Agenda - January 24, 2023
7:00 PM

1. Public Hearings

a. **Coddiwomple Resorts (Continued)**

5549 Tonawanda Creek Road, Pendleton, NY

- Owner wishes to install a pond at 50 ft. setback from side property line where minimum setback required is 100 ft. per Town Code §247-46.A.(1). Property is 8.8 acres with 105 ft. frontage and zoned R1 Low-Density Residential. Area variance sought is 50 ft. pond side yard setback variance.

b. **Matthew Donahue**

5077 Tonawanda Creek Road, North Tonawanda, NY 14120

- Owner wishes to subdivide a parcel of land zoned R-2 Residential into two lots. Proposed subdivision would result in a non-conforming lot with 80 feet of frontage where 100 feet is required per Town Code §247-11.(C). Owner is also requesting a front yard setback of 375 feet where a maximum setback of 250 feet is allowable per Town Code §247-11(D). Property is 15-acres and zoned R-2 Residential. Area variances sought are 20 feet of frontage and 125 feet of front yard setback.

c. **Kurt Doerflein (on behalf of Judith Bayer)**

4714 Tonawanda Creek Road. North Tonawanda, NY 14120

- Owner wishes to subdivide a 610' x 39.5 acre parcel zoned R-2 Residential into two lots. Proposed subdivision would result in a non-conforming lot with 80 feet of depth where 250 feet is required by Town Code §247-11.(C). Property is 39.5 acres with 610 ft. frontage and zoned R-2 Residential. Area variance sought is 170 ft. depth variance.

2. Open regular meeting of ZBA

3. Changes to agenda

4. New Inquires to ZBA

5. Review minutes from prior meeting(s)

- a. 27 December 2022 – [ZBA Minutes on Pendleton Website](#)

6. Deliberation on Hearing(s)

- a. Coddiwomple Resorts
b. Donohue
c. Doerflein (Bayer)

7. Correspondence. TBD – based on inbox at Town Hall

8. Special Topics

- a. Welcome new ZBA Member(s) (if applicable)

- b. Set remaining 2023 and January 2024 dates and times of regular meetings of the ZBA.
- c. Review existing Sign-In Sheet
- d. Review Request to Petition for a Variance
- e. Reappointment status – current term expiring 12/31/2023
- f. Training
- g. Review of referral requirement to Niagara County Planning Board
Per agreement dated December 2005, referral of area variances is not required. Use variances immediately adjacent to a municipal boundary or park, or corner lots on state highways require ZBA referral. A copy of the full agreement is in the ZBA folder.
- h. Review of notification requirement to neighboring municipalities
Notice must be transmitted to the clerk of the adjacent municipality at least ten days prior to any hearing for a use variance for property within 500 ft. of the adjacent municipality.

9. Miscellaneous ZBA items:

- a. Attendance: next meeting
 - 28 February 2023 at 7:00 pm, Pendleton Town Hall.
- b. Comments: ZBA members, Legal

10. Adjourn regular meeting

Area Variance Considerations

1. Benefit to applicant vs Detriment to community
2. Mandatory considerations:
 - 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
 - b. Are there alternative solutions that would not require a variance
 - c. Is the requested variance substantial
 - d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district
 - e. Is the applicant's difficulty self-created

Use Variance Requirements

No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created.