

TOWN OF PENDLETON
ZONING BOARD OF APPEALS (ZBA)
Meeting Minutes - January 24, 2023

Members:

Nicholas Graves, Chairman
David Kantor
Jonathan Welka
Lee Daigler
(Fifth Seat Vacant – Pending Fulfillment)

The regular meeting of the Zoning Board of Appeals (ZBA) was called to order by Mr. Graves at 7:00 pm. ZBA members Graves, Kantor, Welka, and Daigler were present at the meeting. The fifth seat remains vacant pending action by the Town Board. Of note, Pendleton Town Prosecutor Theodore A. Joerg, Esq. and Town Councilman Wolfgang Buechler were also present at the meeting.

PUBLIC HEARINGS:

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.
- The public hearing was called to order at 7:00 pm. The applicant was in attendance and represented by council, Ms. Elizabeth Holmes. Numerous residents from neighboring parcels of land were also in attendance.
- Ms. Holmes stated on the behalf of the applicant that the purpose for the variance is to allow for the applicant to build a home behind his existing dwelling to move into and to sell the existing home to his parents. Ms. Holmes also stated that a survey of the property had not been conducted and that all measurements provided on the proposals submitted with the variance were approximate. Additionally, she stated there is a naturally existing vegetative buffer between the lot in question and the neighboring properties and the proposed 2-story home would not be visible from Tonawanda Creek Road due to the setback.
- A neighbor, Joyce O'Brien voiced her concerns that the information supplied in the notice advising residents of the Public Hearing were not detailed enough and also expressed issue with her "Snowbird" neighbors not being able to be present at the hearing. Ms. Holmes stated she would provide interested parties with her detailed and updated proposal via email prior to the February meeting of the ZBA.
- Another neighbor, Peter Rao, expressed concern with snow removal, drainage, and the impact on adjoining wetlands. Additionally, Mr. Rao stated the applicant has excessive

clutter with non-functioning automobiles, shipping containers, and motocross activities on the property which has generated multiple noise complaints in the past. Mr. Rao also mentioned the applicant runs a business with commercial vehicles on his R-2 Residentially zoned property and has engaged in questionable activity on the adjoining wetlands.

- Multiple neighbors came forward to review the plans submitted by Ms. Holmes on the behalf of the applicant and asked minor questions clarifying lot lines and minor property details.
- A request was made by Ms. Holmes on the behalf of the applicant to leave the hearing open to allow for the survey to be accomplished and presented before deliberations. Ms. Holmes also stated updates would be made to the detailed plan she submitted in advance of the meeting, which will be re-sent before the next meeting.
- A motion was made by Mr. Daigler and seconded by Mr. Kantor to allow the public hearing to remain open. All voted in favor.

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). Area variance sought is 170 ft. depth variance.
- The public hearing was called to order at 7:41 pm. Kurt Doerflein was present, along with his brother, Jeff Doerflein, and their uncle, Peter Bayer.
- Mr. K. Doerflein stated that his mother Judith (property owner) remains in ill health and will be unable to occupy the property again in any capacity. He stated the uniqueness of the property, which occupies land on both sides of Tonawanda Creek Road, has a farm on one side of the street, and a home on the other. The family has been unable to sell the farm and home as one parcel and think they would have better odds if the property was divided.
- Mr. Bayer then spoke and stated there are 6 adjacent non-confirming properties, with the property in question being the largest. Additionally, the rear property line borders state land which cannot be acquired to make the proposed subdivision compliant.
- A neighbor, Lonnie Daigler stated he is in favor of the subdivision and referenced the approval of the variance would be in line with the town's Comprehensive Plan of 2025.
- The public hearing was closed at 7:59 pm.

Coddiwomple Resorts LLC (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.
- The applicant was not present at the meeting.

- A motion was made by Mr. Welka and seconded by Mr. Daigler to send a letter to the applicant stating the hearing would continue the public hearing one final month. The hearing will continue at the February 28, 2023 meeting of the ZBA. All voted in favor.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Mr. Daigler to accept the minutes of the December 27, 2022 meeting and seconded by Mr. Welka. All voted in favor.

Specific Board Deliberation Actions:

Kurt Doerflein (on behalf of Judith Bayer)

4714 Tonawanda Creek Road. North Tonawanda, NY 14120

The ZBA board reviewed the Area Variance and commented as follows:

1. 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 approving the depth variance would have no impact on the character of the neighborhood properties given that no physical changes to the land are taking place as well as the existence of multiple non-conforming properties with similar circumstances nearby.

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

- The board felt there are no reasonable alternatives to the variance other than to leave the property as-is.

3. Is the requested variance substantial?

- Yes, the proposed variance is approximately 70% greater than the town code allows.

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

- The board felt there would be no effect on the physical or environmental conditions in the neighborhood since no physical changes were being made to the property.

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

- The board agreed the difficulty is self-created given as a matter of convenience to the applicant as opposed to necessity.

A motion was made by Mr. Daigler to approve a 170 foot depth variance as requested. The motion was seconded by David Kantor. All voted in favor.

New Inquiries to ZBA: None

Correspondence: None

Special Topics:

- a. Introduction and welcome of new (and former) ZBA member, Mr. Lee Daigler.
- b. Established schedule for 2023 for Public Hearings/ZBA Meetings and standard meeting start time as every 4th Tuesday of the month and Jan, 24, 2023 at 7:00 pm. The motion was made by Mr. Kantor and seconded by Mr. Daigler. All voted in favor.
- c. Conducted the annual review of the sign-in sheet used at all meetings. A motion was made by Mr. Daigler and seconded by Mr. Welka to add horizontal lines separating each speaker in order to make the sheet more presentable. All voted in favor.
- d. Conducted the annual review of the Request to Petition for a Variance, which will remain unchanged. A motion was made by Mr. Kantor and seconded by Mr. Daigler to continue using the form as-is. All voted in favor.
- e. Held a monthly training update/review, Mr. Daigler and Mr. Graves have completed their training for 2023. See recent emails from the Town Clerk for new training opportunities.
- f. Conducted annual review of referral requirements to Niagara County Planning Board, which remain unchanged from 2022.
- g. Conducted annual review of the notification requirements to neighboring municipalities, which remain unchanged from 2022.
- h. Reviewed communication processes between the ZBA and other branches of the town government. Of note, Mr. Graves will contact the Town Clerk to establish a process for the posting of relevant documents for each public hearing to the Town Website in advance of each meeting.

Miscellaneous ZBA Topics:

1. The next scheduled meeting of the ZBA is Tuesday, February 28, 2023 at 7:00 pm.

A motion was made by Mr. Welka to adjourn the meeting at 8:36 pm and seconded by Mr. Kantor. All voted in favor.

Submitted by:

Nicholas Graves

Town of Pendleton

Zoning Board of Appeals

Chairman, Town of Pendleton ZBA.