

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS (ZBA)**  
**Meeting Minutes - February 28, 2023**

**Members:**

Nicholas Graves, Chairman  
David Kantor  
Jonathan Welka  
Lee Daigler  
Jim Churchill

The meeting of the Zoning Board of Appeals (ZBA) was called to order by Mr. Graves at 7:00 pm which began with public hearings. ZBA members Graves, Kantor, Welka, Daigler, and Churchill were present at the meeting. Pendleton Town Prosecutor Theodore A. Joerg, Esq. and Building Inspector Diedrich were also in attendance.

**PUBLIC HEARINGS:**

**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.
- Th public hearing was called to order and continued at 7:00 pm.
- The applicant and architect Rick McNamara were present at the hearing. They revisited applicant's desire to install a number of golf holes in the backyard of the property and stated the main reason for the variance is esthetic in nature.
- The applicant stated he is more than willing to erect a fence of any length/height and/or berm to provide for an extra buffer between the pond and the property line.
- There were no other members of the general public with input on this hearing.
- The public hearing was closed at 7:15 pm.

**Matthew Donahue (Continued)**

*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.
- Neither the applicant nor his attorney were present at the hearing, though a letter was sent by the applicant's attorney, Mrs. Elizabeth Ducharme, Esq., on February 27, 2023 requesting to withdraw the application.

- The public hearing was continued at 7:15 pm without additional comment or input from the audience and subsequently closed at 7:16 pm.

**Robert Taylor**

*6668 Campbell Blvd, Lockport, NY 14094*

- Owner wishes to add 600ft<sup>2</sup> of storage space to an existing 600ft<sup>2</sup> accessory structure. A second 600ft<sup>2</sup> accessory structure also exists on the property for a total aggregate accessory structure square footage of 1200ft<sup>2</sup> which is the maximum allowable for this parcel pursuant to Town Code §247-34E(1). Property is 2 acres and zoned R-2 Residential. Area variance sought is 600ft<sup>2</sup>.
- The public hearing was opened at 7:17 pm.
- The applicant was in attendance and provided a brief explanation of the project, which was initially started without a permit, and remains unfinished pending the outcome of the variance request.
- The applicant stated the purpose of the project was to add storage space as well as a sitting area. The applicant stated half of the variance requested was for storage and the other half would be a covered patio type area.
- There was no public input regarding this variance request from the audience.
- The public hearing was closed at 7:23 pm.

**Andrew Yaeger**

*6988 Bear Ridge Rd., North Tonawanda, NY 14120*

- Owner wishes to construct a 36'x48' accessory structure totaling 1,728ft<sup>2</sup>. Pursuant to Town Code §247-34E(1), a maximum accessory structure of 600ft<sup>2</sup> is permitted on properties under 2 acres. Property is 1.90 acres, irregularly shaped, and zoned R-1 Residential. Area variance sought is 1,128ft<sup>2</sup>.
- The public hearing was opened at 7:24 pm.
- The applicant was in attendance and provided a brief explanation of the project which will serve to house a large RV as well as a number of other larger items.
- The applicant also stated the proposed location of the project is significantly lower than the road and barely visible to passers by.
- An existing 203ft<sup>2</sup> shed will be removed prior to commencing the project.
- A discussion was held regarding building height as the applicant was unsure of the proposed height of the structure and the board expressed concerns about the ability to build to code while accommodating the applicant's RV.
- There was no public input regarding this variance request from the audience.
- The public hearing was closed at 7:31 pm.

**Robert Benigno**

*5390 Irish Rd., Lockport, NY 14094*

- Owner wishes to construct a 28'x32' detached garage totaling 896ft<sup>2</sup>. Pursuant to Town Code §247-11(i), a maximum detached or attached garage may be no larger than 50% of the floor area of the primary structure. The primary structure is 1,161ft<sup>2</sup>, the property is 2.13 acres, and zoned R-2 Residential. Area variance sought is 316ft<sup>2</sup>.
- The public hearing was opened at 7:32 pm.

- The applicant was in attendance and provided a brief explanation of the project which will serve as a garage with home office space above.
- Mr. Daigler expressed concerns with the ability to build to code without infringing on the side setback due to the irregular shape of the lot. Mr. Welka agreed and mentioned the desire to see a survey of the property with the proposed project laid out to scale.
- A discussion was held regarding building setback as the applicant mentioned he intended on building at the same setback as the house. Mr. Churchill stated the impact of the size of the structure may be diminished if the garage were to be set back further from the home. Mr. Daigler also mentioned the front setback may be inadequate for a detached garage, this remained uncertain due to the absence of the survey.
- There was no public input regarding this variance request from the audience.
- The public hearing concluded for the evening at 7:48 pm and remains open.

### **Dylan Randall**

*4774 Mapleton Rd., Lockport, NY 14094*

- Applicant is seeking a use variance for proposed parcel to allow for the operation of a recreational facility which is not a use permitted by right for the property pursuant to Town Code §247-11(a). The property size is yet to be determined and zoned R-2 Residential. Use variance sought to allow the property to be used to operate a commercial recreational facility.
- A letter was hand received by ZBA sent by Mr. Randall and his partner, Mr. Jason Ball, requesting to withdraw their application for a use variance.
- The public hearing was opened at 7:49 pm and subsequently closed without additional comment from the ZBA or the audience at 7:50 pm.

### **REGULAR ZBA MEETING:**

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

A motion was made by Mr. Kantor to accept the minutes of the January 24, 2023 meeting of the ZBA and seconded by Mr. Welka.

- Voting in Favor: Graves, Kantor, Welka, Daigler
- Voting Against: None
- Abstained: Churchill
- Motion carried by a 4-0 vote

#### ***Specific Board Deliberation Actions:***

### **Coddiwomple Resorts LLC (Continued)**

*5549 Tonawanda Creek Road, Pendleton, NY*

Mr. Graves made a motion to table the vote on this application in order to review restrictions the board may place on the project. Mr. Kantor seconded the motion.

- Voting in Favor: Graves, Kantor, Daigler, Churchill
- Voting Against: Welka

- Abstained: None
- Motion carried by a 4-1 vote

**Matthew Donahue (Continued)**

*5077 Tonawanda Creek Road, North Tonawanda, NY 14120*

Mr. Graves made a motion to accept the withdrawal of the area variance application, without prejudice, as requested by the applicant. Mr. Kantor seconded.

- Voting in Favor: Graves, Kantor, Daigler, Churchill, Welka
- Voting Against: None
- Abstained: None
- Motion carried by a 5-0 vote

**Robert Taylor**

*6668 Campbell Blvd, Lockport, NY 14094*

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 variance would have no impact on the character of the neighborhood or nearby properties.

**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 50% 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.

**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.

Mr. Kantor made a motion to approve a 600ft<sup>2</sup> accessory structure size variance with a 1 year time limit for project completion. Mr. Daigler seconded.

- Voting in Favor: Graves, Kantor, Daigler, Churchill, Welka
- Voting Against: none
- Abstained: none
- Motion carried by a 5-0 vote

**Andrew Yaeger**

*6988 Bear Ridge Rd., 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 variance would have no impact on the character of the neighborhood or nearby properties.

**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 or build to code.

**3. Is the requested variance substantial?**

- Yes, the proposed variance is nearly 75% 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.

**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.

Mr. Welka made a motion to approve a 600ft<sup>2</sup> accessory structure size variance with a 1 year time limit for project completion. Mr. Kantor seconded.

- Voting in Favor: Graves, Kantor, Churchill, Welka
- Voting Against: Daigler
- Abstained: none
- Motion carried by a 4-1 vote

**Dylan Randall**

*4774 Mapleton Rd., Lockport, NY 14094*

Mr. Graves made a motion to accept the withdrawal of the use variance application, without prejudice, as requested by the applicant. Mr. Churchill seconded.

- Voting in Favor: Graves, Kantor, Daigler, Churchill, Welka
- Voting Against: none
- Abstained: none
- Motion carried by a 5-0 vote

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

***Correspondence: None***

***Special Topics:***

- a. Introduction and welcome of new ZBA member, Mr. Jim Churchill.
- b. A discussion was held regarding the variance process. The board discussed adopting a policy requiring applicants to submit all required documents and/or supplementation thereof to the Town Clerk's office no later than 5 business days prior to the public hearing, typically the Tuesday prior to the regular meeting of the ZBA. The purpose of this policy is to afford ample time for the Town Clerk's office to post such documents to the Town Website no later than 24 hours prior to the start of the public hearing. The board discussed adding the link containing relevant documents for each public hearing on the notices mailed to residents within the required notification distance. The board discussed requiring applicants to submit a survey of their property along with variance applications. The board elected to add these items to the March 28, 2023 ZBA Agenda.

***Miscellaneous ZBA Topics:***

1. The next scheduled meeting of the ZBA is Tuesday, March 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. Churchill.

- Voting in Favor: Graves, Kantor, Daigler, Churchill, Welka
- Voting Against: none
- Abstained: none
- Motion carried by a 5-0 vote

Submitted by:

Nicholas Graves  
Chairman, Town of Pendleton ZBA.