

TOWN OF PENDLETON
ZONING BOARD OF APPEALS (ZBA)
Meeting Minutes - March 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, Daigler, and Churchill were present at the meeting. Mr. Welka was excused. Pendleton Town Prosecutor Theodore A. Joerg, Esq. was also in attendance.

PUBLIC HEARINGS:

Robert Benigno (Continued)

5390 Irish Rd., Lockport, NY 14094

- Owner wishes to construct a 28'x32' detached garage totaling 896ft². 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 1,161ft², the property is 2.13 acres, and zoned R-2 Residential. Area variance sought is 316ft².
- The continuation of this public hearing began at 7:00 pm.
- The applicant was in attendance and provided a brief review of the project as well as an updated survey showing compliance with all setbacks.
- The public hearing was closed at 7:07 pm without any questions or comments from the general public in attendance.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Mr. Churchill to accept the minutes of the February 28, 2023 meeting of the ZBA and seconded by Mr. Kantor.

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

Specific Board Deliberation Actions:

Coddiwomple Resorts LLC

5549 Tonawanda Creek Road, Pendleton, NY

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 numerous alternatives to installing the pond where it has been requested.

3. Is the requested variance substantial?

- Yes, the proposed variance is half of the distance require by town code.

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. Graves moved to grant a 37 foot pond side yard setback variance with an 18 month time limit for project completion. Additionally, a continuous 6 foot fence, either solid or non-climbable in nature, must be erected along the property line and finishing no less than 100 feet from the edges of the pond. Mr. Churchill seconded the motion.

- Voting in Favor: Graves, Kantor, Churchill
- Voting Against: Daigler
- Abstained: none
- Motion carried by a 3-1 vote

Robert Benigno

5390 Irish Rd., 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 the only alternative was to build to code.

3. Is the requested variance substantial?

- Yes, the proposed variance is substantial given the requested variance amount compared to the size of the home.

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 moved to grant a 316 sq ft detached garage size variance as requested by the applicant with a one year time limit for project completion and no additional restrictions or conditions. Mr. Graves seconded the motion.

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

New Inquiries to ZBA:

Andrew Yaeger

6988 Bear Ridge Rd., North Tonawanda, NY 14120

Mr. Yaeger and counsel, Mr. Ari Goldberg, Esq. were in attendance pursuant to their March 23, 2023 request seeking a re-hearing of the February 28, 2023 decision by the ZBA.

Mr. Kantor moved to re-hear the case provided the applicant completes the application process from the beginning. Mr. Churchill seconded.

- Voting in Favor: Graves, Kantor, Daigler, Churchill
- Voting Against: none
- Abstained: none

- Motion carried by a unanimous (absent ZBA members excluded) 4-0 vote. Of note, the re-hearing of this case must have a unanimous vote of the members in attendance in order to be approved.

Correspondence: *None*

Special Topics:

- a. None.

Miscellaneous ZBA Topics:

1. The next scheduled meeting of the ZBA is Tuesday, April 25, 2023 at 7:00 pm.
2. Mr. Churchill made a motion to require all supplemental information for each variance request to be submitted to the Town Clerk's office no later than 5 business days prior to the public hearing for the variance in question. The motion was seconded by Mr. Kantor.
 - Voting in Favor: Graves, Kantor, Daigler, Churchill
 - Voting Against: none
 - Abstained: none
 - Motion carried by a 4-0 vote
3. Mr. Churchill made a motion to require a legal survey (or copy) to be submitted for each variance request. Additionally, the survey must contain all structures (existing and proposed), if any, and all dimensions/setbacks. The motion was seconded by Mr. Daigler.
 - Voting in Favor: Graves, Kantor, Daigler, Churchill
 - Voting Against: none
 - Abstained: none
 - Motion carried by a 4-0 vote
4. Mr. Kantor made a motion to add the web address to the ZBA webpage where residents may find more information pursuant to each variance request to the public hearing notices sent to neighboring properties of the applicant as well as posted in the newspaper. The Motion was seconded by Mr. Daigler.
 - Voting in Favor: Graves, Kantor, Daigler, Churchill
 - Voting Against: none
 - Abstained: none
 - Motion carried by a 4-0 vote

A motion was made by Mr. Kantor to adjourn the meeting and seconded by Mr. Churchill.

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

Town of Pendleton

Zoning Board of Appeals

Submitted by:

Nicholas Graves

Chairman, Town of Pendleton ZBA.