

TOWN OF PENDLETON
ZONING BOARD OF APPEALS (ZBA)
Meeting Minutes – May 23, 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. ZBA members Graves, Kantor, Welka, Daigler, and Churchill were present at the meeting. Pendleton Town Prosecutor Theodore A. Joerg, Esq. was also in attendance.

PUBLIC HEARINGS:

Yaeger

6988 Bear Ridge Rd., North Tonawanda, NY 14094 (Re-Hearing)

Owner wishes to construct a 36' x 48' accessory structure totaling 1,728 SF. Town code allows for a total of 600 SF on a parcel less than two acres. Property is irregularly shaped and 1.9 acres in size. Total area variance sought is 1,128 SF.

The public hearing was opened at 7:00 pm

The applicant was in attendance.

The applicant's attorney Ari Goldberg of Barclay Damon spoke on behalf of applicant regarding a summary of the last hearing and the goal of the rehearing as well as similar variances granted by the ZBA in the past (see letter dated 4/24/2023 for additional information) he also spoke to area variance statutory analysis. Further discussion about visibility, storage needs, the size of the lot, and the fact that previous variance had no binding effect on the current ZBA.

The following residents spoke and were in favor of the board granting the required variance. Scott Gear 6991 Bear Ridge, Dennis Stewmiller 6964 Bear Ridge, Howard Fritzky.

No additional comments or questions came from the general public in attendance.

The public hearing was closed at 7:28 pm.

Vivian

5865 Tonawanda Creek Rd., Lockport, NY 14094

Owner wishes to construct a 32' x 30' accessory structure totaling 960 SF. Town code allows for a total of 600 SF on a parcel less than two acres. The property is 0.91 acres. Total area variance sought is 360 SF.

The public hearing was opened at 7:28 pm

The applicant was in attendance and provided a brief review of the project as well as an survey and other documents showing compliance with other requirements of the Zoning Ordinance.

Howard Fritzky of 5631 Tonawanda Creek Rd, voiced his concerns with drainage and flooding in the aera of the project, as well as wetlands behind the property. It was determined that the wetlands are outside the property in question, via Niagara County GIS Mapping. It was also determined the site was not in the flood plain via Niagara County GIS Mapping;

No additional comments or questions came from the general public in attendance.

The public hearing was closed at 7:44 pm.

Wheeler

5894 Fisk Rd., Lockport, NY 14094

Owner wishes to construct a 14' x 30' accessory structure totaling 420 SF. A 1,200 SF accessory structure already exists on the parcel. Town Code allows for a total of 1,200 SF on a parcel of this size (4.5 acres). Total area variance sought is 1,200 SF.

The public hearing was opened at 7:42 pm

The applicant was in attendance provided a brief review of the project.

Jennifer Spinks of 5895 Fisk Rd spoke about the project.

No comments or questions came from the general public in attendance.

The public hearing was closed at 7:45 pm.

REGULAR ZBA MEETING:

Review Minutes from Prior Meeting:

A motion was made by Mr. Daigler to accept the minutes of the April 25, 2023 meeting of the ZBA and seconded by Mr Kantor.

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

Voting Against: None

Abstained: None

Motion carried by a 5-0 vote

Specific Board Deliberation Actions:

Yaeger

6988 Bear Ridge Rd., North Tonawanda, NY 14094 (Re-Hearing)

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 the size structure that has been requested.

3. Is the requested variance substantial?

Yes, the proposed variance is 2.88 times greater than allowed 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. Kantor move to grant a total aggregate accessory structure variance of 1728 sf (variance not to exceed 1,128 sf.) with a 12 month timeline limit for project completion. Mr. Daigler seconded the Motion. Motion must be unanimous due to re-hearing rules.

Voting in Favor: Graves, Kantor, Daigler, Churchill

Voting Against: Welka

Abstained: None

Motion denied by a 4-1 vote

Yaeger

6988 Bear Ridge Rd., North Tonawanda, NY 14094 (Re-Hearing) Continued

Mr. Welka move to grant a total aggregate accessory structure variance of 1500 sf (variance not to exceed 900 sf.) with a 12 month timeline limit for project completion. Mr. Churchill seconded the Motion. Motion must be unanimous due to re-hearing rules.

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

Vivian

5865 Tonawanda Creek 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 there are numerous alternatives to the size structure that has been requested.

3. Is the requested variance substantial?

Yes, the proposed variance is 1.6 times greater than allowed 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. Churchill move to grant a total aggregate accessory structure variance of 960 sf (variance not to exceed 360 sf.) with a 12 month timeline limit for project completion. Additionally, the project will make all feasible efforts to direct drainage toward the east property line to the existing drainage swale. Mr. Kantor seconded the Motion.

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

Wheeler

5894 Fisk 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 there are numerous alternatives to the size structure that has been requested.

3. Is the requested variance substantial?

No, the proposed variance is 1.35 times greater than allowed 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 move to grant a total aggregate accessory structure variance of 1620 sf (variance not to exceed 420 sf.) with a 12 month timeline limit for project completion. Mr. Churchill seconded the Motion.

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: None

Miscellaneous ZBA Topics:

1. The next scheduled meeting of the ZBA is Tuesday, June 27, 2023 at 7:00 pm.

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

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

Voting Against: none

Abstained: none

Motion carried by a 5-0 vote

Submitted by:

Nicholas Graves

Chairman, Town of Pendleton ZBA