

WEST SENECA TOWN OFFICES
1250 Union Road
West Seneca, NY 14224

ZONING BOARD OF APPEALS
Minutes #2015-03
March 23, 2015

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairman Tim Elling at 7:00 P.M. followed by the Pledge of Allegiance led by board member Rick Marzullo and 30 seconds of silent prayer.

ROLL CALL: Present - Tim Elling, Chairman
Michael P. Harmon
Evelyn Hicks
Michael P. Hughes
Rick Marzullo
Jeff Baska - Building and Plumbing
John Fenz - Town Attorney

Absent - None

Chairman Elling read the Fire Prevention Code instructing the public where to exit in case of a fire or an emergency.

OPENING OF PUBLIC HEARING

Motion by Hughes, seconded by Marzullo, to open the public hearing.

Ayes: All **Noes: None** **Motion Carried**

APPROVAL OF PROOFS OF PUBLICATION

Motion by Harmon, seconded by Hicks that proofs of publication and posting of legal notice be received and filed.

Ayes: All **Noes: None** **Motion Carried**

APPROVAL OF MINUTES

Motion by Hughes, seconded by Hicks, to table the Minutes #2015-02 of February 2005-02.

Ayes: All **Noes: None** **Motion Carried**

OLD BUSINESS

2010-010

Request of Deacon M. Comerford for a renewal of a variance for property located at 151 Century Drive to raise chickens on the property.

Mr. Comerford explained that he would like to renew his variance to raise chickens, 6 hens. This is the third or fourth time Mr. Comerford has come before the board to renew his variance that has been granted annually as explained by Mike Hughes. In terms of noise or neighborhood issues there have been no records filed with the police department.

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a one year variance for property located at 151 Century Drive to raise chickens on the property.

Ayes: All

Noes: None

Motion Carried

2012-036

Request of Melinda and Edward Bauerlein for a renewal of a variance for property located at 72 Sunset Creek Drive to raise chickens on the property.

Mike Hughes explained that Mr. and Mrs. Bauerlein first appeared before the Zoning Board in 2012 regarding this variance and they have had to appear before the board annually after that. Mr. Bauerlein explained that he currently has two chickens but he would like to maintain the variance for five chickens. There have been no complaints filed with the police department over the past year.

No comments were received from the public.

Motion by Hicks, seconded by Hughes, to close the public hearing and grant a one year variance for property located at 72 Sunset Creek Drive to raise five chickens on the property.

Ayes: All

Noes: None

Motion Carried

2014-048

Request of William Hartnett Sr. for a variance for property located at 484 Harlem Road to enlarge the business (300 sq feet allowed, 665+ sq feet requested) and requesting live music.

Mike Hughes explained that this is the third time Mr. Hartnett has come before the board. William Hartnett Sr. of 6 Carlyle Lancaster, NY explained that the deck attached to his building has been used for over 25 years to serve guests and he would like to enclose that area from approximately 300 sq feet to 665 sq feet, he would also like to have live music outside. Mr. Hartnett explained that the music would be seasonal from May through October, generally on Saturdays and Sundays from two in the afternoon until eight at night. Mike Hughes asked Jeff Baska if the Building Department has any concerns in terms of doubling the square footage or additional parking issues. Code Enforcement Officer Jeff Baska explained that any concerns regarding that would be addressed at the Planning Board. Should the variances be granted, Mr. Hartnett will have to come up with a site plan and go before the Planning Board. Jeff Baska explained that Mr. Hartnett would like to enclose about 75% of the existing deck to be used year round; the outside portion would be the garage section which would be a seasonal venue. Jeff also mentioned that in order to have live music outdoors this variance would have to go before the Town Board. Attorney John Fenz stated that the Zoning Board has the authority to grant a variance for indoor music whereas the Town Board would grant permissions for outdoor music. Jeff Baska explained that the Town Board typically approves outdoor music for a specific date and time, mainly for events or lawn fetes that are happening in the town. Attorney John Fenz suggested that the outdoor music variance request not even be considered at this time, as it should go before the Town Board.

Attorney Fenz stated that exclusive of the outdoor music, the request for a variance at this time is enlargement of the outdoor patio and enclosing the outdoor patio. Mr. Hartnett explained that he is not enlarging the deck, he is just enclosing it. Jeff Baska explained that Mr. Hartnett has a nonconforming business; the Town Code says that with a nonconforming use a person cannot expand more than 25 percent of what they already have. It was clarified that Mr. Hartnett is not expanding the patio itself, he is expanding the use. It was determined that the side deck would not be enclosed but that the rear deck would be enclosed.

A letter of support was signed by residents who reside at 11 Alexander Road, 18 Bernadette Terrace, 169, 158, 177, 155 & 170 Tim Tam Terrace, 201 Woodcrest Drive, 20 Pacecrest Court, 140 Thorndale, 289 Reserve Road, 35,68, 95, 79, 73, 65, 43, 70, 56, 96,241, 247,164 & 165 Emporium Avenue, 102 & 113 Wildwood Road, 68, 63, 36, 80, 74, 176, 105, 230, 225, 231, 115, 139, 38 & 112 Aurora Avenue, 72, 158 & 50 Barnsdale Avenue, 32 Belgia Place, 42 Pleasantview Lane, 88 Reynolds Road, 137, 223, 306, 321 & 365 Collins Avenue, 75 Tracy Lynn Lane, 46 Rebecca Way, 50 North Ave, 32 George Drive, 651 Harlem Road, 19 George Drive, 16 Brian Lane, 43, 189 & 205 Knox Avenue, 380 Indian Church Road, 800 Union Road, 688 & 692 Potters Road, 328 & 60 Dwyer Street, 2987 Seneca Street, 343 Mill Road, 237 Indian Church Road, 107 French Lea Road, 73 Westminster Road, 121 Bellwood Avenue, 142 Chamberlin Drive, 49 Ludwig, 68 Emporium, 97 Aurora Ave, 3570 East Aurora, 27 Maryon Drive, 45 Tindle, 383 Meadow Drive, 108 Willowcrest Drive, 389 & 485 Meadow Drive, 212 Cranwood Drive, 265 Leydecker Road, 1299 Seneca Creek, 127 Sunnyside Drive, 236 Schultz Road. 171 Briarhill Drive, 140 Wildwood Ave, 282 Burgh Ave, 27 Klas Ave, 4261 Clinton Street, 45 Harlem Road, 4138 Clinton Street, 66 Cathedral Drive, 56 Fairfax Drive, 39 Belgia Place, 222 Langner Road, 615, 725, &629 Harlem Road, 132 Dwyer, 33 & 42 Kirkwood, 50 North Ave, 164 Almont, 60 Know, 176 Blossom. It was determined that the residents who have signed the letter of support are not all residents who will be directly affected by the outdoor music. Attorney Fenz explained that these signed letters should not be taken into consideration at this time, as the live outdoor music variance will have to go before the Town Board. There were also letters of opposition signed by residents residing at 63, 65, 41, 49, 42, 37, 29 and 67 Aurora Avenue.

Jim Rommel of 67 Aurora spoke and started to speak about the music and he was reminded that the current motion on the floor is not pertaining to music. He was informed that any concerns regarding music should be directed to the Town Board when Mr. Hartnett appears before them. Mr. Rommel also spoke about the parking issues. Jeff Baska stated that Mr. Hartnett will have to go before the Planning Board in regards to the parking and all questions pertaining to that should be directed towards the Planning Board.

Mark Doucette of 37 Aurora spoke and stated that the patio has not been there for as long as Mr. Hartnett has stated. Mr. Doucette also explained that parking has been an issue in the past, reminding the Zoning Board that there is one way in and one way out of the parking lot which is a fire hazard. Evelyn Hicks reminded the public that the Planning Board meetings are also open to the public, should any feel the need to attend they are more than welcome to make comments regarding the variance there as well.

Motion by Harmon, seconded by Marzullo to grant the variance for the property located at 484 Harlem Road to enclose the existing deck which would allow it to go from 300 sq feet to 720 sq feet.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2015-008

Request of James Treadway for a variance for property located at 1036 Center Road to erect a 6' fence in front yard and also requesting second driveway access.

Mr. Treadway explained that he would like to add a second driveway access off of Duchess Drive for the sole reason of safety. He explained that Center Road is a busy road, there are several pedestrians that walk by his drive way and it can make entering and exiting his driveway dangerous. Mr. Treadway also explained that people do not always obey the stop signs that are on Sunnyside and Duchess which also creates a hazard when pulling into and out of the driveway. The resident explained that he owns a boat and trying to back it into his driveway off of Center Road during the summer is very difficult especially with the high volume of traffic on Center Road. Mr. Treadway pointed out that where he would like to construct the new sidewalk there is not a side walk, nor are there trees or signs. The fence would be not only for privacy but also for safety, as Mr. Treadway has a young child. The fence will be a regular wooden stockade fence that is stained; the front gate will also be made out of the same material. Mike Hughes asked if there were any concerns from the Building and Plumbing department with constructing a 6' fence right on the property line. Mr. Baska explained that there is 16' of Town property from Mr. Treadways property line to the street which is ample room for a vehicle pulling out. Evelyn Hicks quested how wide and long the drive way would be, in addition to the material that it would be made out of. Mr. Treadway explained that it would most likely be concrete or black top and 16' wide; his current driveway is black top.

There were no comments received from the public.

Rick Marzullo asked how far the setback is planned to where Mr. Treadway actually wants to construct the driveway. Mike Harmon pointed out that people on Duchess Drive ware not going to be familiar with people pulling into or out of the proposed second driveway. Tim Elling stated that questioned that if the variance for the second driveway is granted,

could there be a stipulation from the Building Department as to where the driveway is constructed. Attorney Fenz explained that it would be difficult to enforce that decision so it would be better to have clear and definitive measurements. Jeff Baska explained that the Board could grant it with the stipulation of 70' or to the discretion of the Code Official, so if it did not seem that 70' does not work then the Code Official would have the ability to change the measurements. For clarification no closer than 75' to his lot line he will be 100' off the road, the property is addressed on a county road but the second driveway is on a town road. Attorney Fenz stated that if the Board is going to make it a stipulation that it needs to be a certain distance away from something, Center road line does change over time so a good marker would be the south line of lot 205. The line that Mr. Treadway would want to measure his 75' from is a line that is 33' off of the south line of lot 205.

Mike Harmon stated that the motion is to approve the 6' fence as requested and approve the second access as long as the driveway is no closer than 75' from the front south lot line. Jeff explained that Mr. Treadway is going to have to measure 99.5' from the front of his house and then come back 75' from there. Mr. Treadway asked if the board would accept 50' from his lot line. Tim Elling made a motion to table the variance so that he could meet with Code Enforcement Officer Jeff Baska so that they could come up with an exact distance.

Motion by Elling, seconded by Hughes to table the variance for property located at 1036 Center Road construct a second driveway access.

Ayes: All **Noes: None** **Motion Carried**

Motion by Hicks, seconded Hughes by to grant the variance as requested for property located at 1036 Center Road to erect a 6' fence in front yard.

Ayes: All **Noes: None** **Motion Carried**

2015-009

Request of Joseph Dauria for a variance for property located at 223 Bullis Road to erect a garage higher than permitted (12' required max height, 16' requested max height)

Joseph Dauria explained that he is looking to build a pole bard approximately 32' by 64' with a 16' wall to store his camper. The drawing shows that Mr. Dauria is looking to construct the garage 70' off of the house and 3' off the property line on the west side. Jeff

Baska explained that Mr. Dauria is requesting a higher than allowed garage and that there is not a wall height written on any of the drawings. Mr. Dauria explained that the height of the walls would be 16', making the midspan of the roof around 22'. The garage will have a stone floor; Mr. Dauria is mainly looking for dry storage at this point. Jeff Baska commented saying the zoning is an R75 which is a residential district and it does not allow a business within in district.

The signed letters of support that Mr. Dauria submitted did not have the correct dimensions of the garage written on it. The Board asked that Mr. Dauria write down the exact dimensions of his garage and have the neighbors resign the letters.

Motion by Hughes, seconded by Hicks to table variance for property located at 223 Bullis Road to erect a garage higher than permitted (12' required max height, 16' requested max height) until Mr. Dauria gets letters of consent signed that state the exact dimensions of the proposed garage.

Ayes: All

Noes: None

Motion Carried

Adjournment

Chairman Elling asked about a variance the Board approved a few months ago regarding the church by Union Fire pending the signed letter with the neighbor. Tim Elling asked if the Building and Plumbing department ever received the letter. Jeff Baska explained that he would look into it and get back to the board with an answer.

Jeff explained that he has still yet to receive a letter from Mr. Staychock of Schawbel's

Motion by Harmon, seconded by Hicks, to adjourn the meeting at 8:12 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully Submitted,

Marleah Martinez
Town Attorney's Office/
Zoning Board Secretary