

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

ZONING BOARD OF APPEALS
Minutes #2013-02
February 27, 2013

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairman David Monopolus at 7:00 P.M. followed by the Pledge of Allegiance to the Flag led by Town Clerk Jacqueline Felser and 30 seconds of silent prayer.

ROLL CALL: Present - David Monopolus, Chairman
Michael P. Harmon
Evelyn Hicks
Michael P. Hughes
Sandra Giese Rosenswie
Jeffrey Baksa, Code Enforcement Officer
Shawn P. Martin, Town Attorney

Absent - None

Chairman Monopolus 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 Rosenswie, to open the public hearing.

Ayes: All Noes: None Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Hicks, seconded by Harmon, 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 Rosenswie, to approve Minutes #2013-01 of January 23, 2013.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2012-036

Request of Melinda & Edward Bauerlein for a variance for property located at 72 Sunset Creek Drive to raise chickens

The applicant was not present at the meeting.

2012-036 (continued)

Motion by Hughes, seconded by Rosenswie, to table this item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2012-060

Request of Nicholas M Calandra (Hearts for the Homeless WNY) for a variance for property located at 395 Center Road for placement of a temporary structure in parking lot (temporary structures not allowed)

Chairman Monopolus stated the applicant requested this item be tabled until next month.

Motion by Hughes, seconded by Harmon, to table this item until the March meeting.

Ayes: All

Noes: None

Motion Carried

2013-003

Request of Christopher Ford for a variance for property located at 165 East Avenue for construction of a 6' fence in yard along with existing hedgerow and interpretation of the Zoning Ordinance with regard to 6' high railings on pool deck

Christopher Ford presented an updated survey indicating a 6' high dog eared board fence along Miller Avenue on the outside of the hedges, leaving sufficient room to maintain the hedges.

Attorney Ralph Lorigo represented surrounding property owners and reminded the board members there is a lawsuit regarding this issue. He stated the initial application asked that the hedgerow be maintained and now Mr. Ford wants to construct a 6' fence on the outside of the hedgerow, but according to Town Code he cannot have either because the setback on Miller Avenue is only 16' from the street and 30' is required. Mr. Lorigo stated the hedgerow is at least 12' high, higher than the house, and fits the definition of a fence as stated in the Town Code. He understood there is a privacy issue on corner lots and the neighbors would not have a problem with Mr. Ford maintaining the hedgerow at 4', which would still require a variance. Mr. Lorigo referred to the 5' above ground pool and stated the fence on top of the deck is 6' above that making the total height 11', but the highest a fence can be is only 6'. A railing is required and needs to be 42" high, but he did not consider this a railing. Mr. Lorigo stated the pool is located 3' off the property line and when the next door neighbors look out their window all they see is an 11' wall.

2013-003 (continued)

Chairman Monopolus responded that the 3' setback is legal and Mr. Ford could build a 12'6" high garage in the same location and it would be legal.

Mr. Lorigo stated the fence is a substantial detriment to the neighbors and granting a variance for the hedgerow or fence along Miller Avenue will produce an undesirable change. He further stated the hedgerow and the fence above the pool are self-created by the Ford's and they could trim the hedge and remove the fence on top of pool.

Code Enforcement Officer Jeffrey Baksa stated the police and Code Enforcement Officers visited the property and they do not believe the hedgerow poses a hazard as it is setback 8' from the road. The Code Enforcement Officers do not consider the hedgerow a fence and do not consider the railing on the pool deck a fence. The requirement for a railing is that it be the proper height and the spindles/slats be no more than 4" on center apart, but nothing says they cannot be together and there is no maximum height. The pool is considered an accessory structure and can be 3' from the property line and if it was a shed or garage it could be up to 16' high. Mr. Baksa stated the 30 feet of 6' high fence at the rear of the property requires a variance along with the proposed 6' fence on Miller Avenue.

Mr. Harmon questioned the reason for the 6' fence on the back of the property and if Mr. Ford will agree to trim the hedgerow to 6'.

Mr. Ford responded that he wanted the 6' fence for privacy and he will agree to trim the hedgerow to 6'.

Chairman Monopolus noted receipt of a letter from the property owner at 159 East Avenue stating she has no objection to Mr. Ford keeping the hedges and installing a new fence.

Mr. Harmon did not see a reason for both the hedgerow and fence along Miller Avenue and suggested Mr. Ford just keep the hedgerow trimmed and eliminate the fence. There would be no variance required for the hedgerow.

Mr. Baksa noted that the hedgerow will have to be kept trimmed or Mr. Ford will be issued a violation letter in accordance with the Property Maintenance Ordinance.

Mr. Ford responded that the fence was not necessary and he will keep the hedgerow maintained at 6'.

2013-003 (continued)

Dennis Domzalski stated he lives next door to Mr. Ford and is opposed to a fence on top of the pool. Mr. Domzalski commented on the unsightly appearance of the fence and did not believe it should be allowed in West Seneca.

Debra Domzalski stated this is a 6' stockade fence on top of the pool and it looks terrible in the neighborhood. She thought the value of her house has been depreciated and she would have preferred to look at a garage.

Mr. Lorigo requested a determination from the Zoning Board with regard to the fence on top of the deck.

Motion by Rosenswie, seconded by Monopolopolus, to recess to Executive Session at 7:50 P.M.

Ayes: All

Noes: None

Motion Carried

The Zoning Board members returned at 7:55 P.M.

Town Attorney Shawn Martin advised that the Code Enforcement Office has made their determination with regard to the railing on the pool deck and the Zoning Board is not required to make any further interpretation.

Motion by Hicks, seconded by Rosenswie, to close the public hearing and grant a variance for property located at 165 East Avenue for construction of a 30 foot section of 6' fence at the rear of the property, conditioned upon trimming the shrubs on the Miller Avenue side of the property to no greater than 6'.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2013-006

Request of Chris Wood for a variance for property located at 810 Union Road to reduce width of access road to 27' (30' required)

Chris Wood of Carmina Wood Morris, engineers for the Park Lane Village Apartments project, requested a 27' drive aisle through the multi-family residential development rather than the 30' required. He presented information on fire trucks routing through the site with no problem, noting there will be no parking on the road and the additional 3' will be used for landscaping. Mr. Wood stated this is a private road and school buses are allowed on site.

2013-006 (continued)

Developer Bryan Young also commented the existing Park Lane is only 27' and they will be saving a number of trees by eliminating 3' of roadway.

Chairman Monopolus questioned the width of the road going back to the other project.

Mr. Wood thought the other road was only 24', but stated it is not their project. He further commented that the college drives were only 25' wide and were accessible by emergency vehicles.

Town Attorney Shawn Martin stated that a major concern at the Planning Board was the slope of the driveway on Union Road.

Mr. Wood responded they are redoing the entrance and the fire company had no issues with the driveway width.

Arlene Vogt questioned if the 27' road is coming out to Union Road and why they are making it smaller than the required 30'.

Mr. Wood stated the 27' road will only go to where Park Lane ends. The road is being reduced to preserve green space and also because NYSEG, Verizon and National Fuel is requiring them to have 20' of green space in front of the buildings for a utility corridor. If they have to push the buildings back it will take more trees. Mr. Wood noted the entrance driveway is being widened from 15' to 20' which complies with the code.

Karen Lucachik thought the Planning Board required the 30' road when the project appeared before them for site plan approval.

Mr. Martin stated that the road was discussed at the Planning Board, but their major concern was the apron on Union Road and they directed the developer to apply for a variance for the 27'.

Chairman Monopolus commented that a town road is 28' and parking is allowed on the side of the road.

Mrs. Hicks stated that the Zoning Board members reviewed the Planning Board minutes and there was no recommendation concerning the width of the driveway. The fire company also did not have a problem with it.

2013-006 (continued)

Mr. Martin advised that the Planning Board cannot give permission to reduce the width of the driveway; only the Zoning Board has the authority to grant a variance for that.

Motion by Harmon, seconded by Hughes, to close the public hearing and grant a variance for property located at 810 Union Road to reduce the width of the access road to 27'.

Ayes: All

Noes: None

Motion Carried

2013-007

Request of Nick & Nancy Gugliuzza for a variance for property located at 527 Meadow Drive to reduce front setback to 20' (30' required)

Nicholas Gugliuzza asked that his variance request be tabled until the next meeting.

Motion by Hughes, seconded by Rosenswie, to table this item until the next meeting.

Ayes: All

Noes: None

Motion Carried

2013-009

Request of Corey Auerbach Esq. of Damon Morey LLP for property located at 3146 Transit Road for the following four variances: 1) Sign #1 - 58.2 sf requested (40 sf allowed); 2) Sign #1 - electronic sign variance; 3) Sign #2 - 50 sf requested (20 sf allowed); Sign #2 - 12'6" height requested (12' height allowed)

Attorney Corey Auerbach of Damon Morey LLP stated the proposal for two signs at the new KIA dealership on Transit Road. KIA has certain requirements for signage and they would like to move the existing sign from its former location a couple hundred yards down the road to the new location. They would also like to replace the Chrysler Jeep sign at the entrance with an electronic sign. Mr. Auerbach presented a letter of support from Bryan Young, owner of the property abutting the dealership.

Town Attorney Shawn Martin questioned if the sign that is being moved will be replaced.

Mr. Auerbach responded that the sign will not be replaced and that property is for sale.

2013-009 (continued)

Mr. Hughes questioned the hours of illumination for the electronic sign and if it will be scrolling.

Mr. Auerbach stated the sign will be 300' from a residential zoning and will comply with the detailed regulations specified in the Town Code.

Code Enforcement Officer Jeffrey Baksa noted that the hours/type of illumination will be dealt with at the Town Board and through the building permit process.

Karen Lucachik stated that many years ago when the dealership was before the Town Board, they were granted approval conditioned upon having grass space between the sidewalk and where they park the cars, but they have never complied with that. She thought that approval of these signs should be conditioned on compliance with the original conditions.

Mr. Harmon stated that property is now for sale and it is the Code Enforcement Officers' job to enforce conditions.

Motion by Monopolus, seconded by Rosenswie, to close the public hearing and grant the following variances for property located at 3146 Transit Road: 1) Sign #1 - 58.2 sf electronic sign; 2) Sign #2 - 50 sf sign, 12'6" high.

Ayes: All

Noes: None

Motion Carried

2013-010

Request of Gregory Bermel for a variance for property located at 202 Charlescrest Court to allow a 6' fence in front yard (maximum 4' allowed) and 1' setback for driveway (3' setback required)

Gregory Bermel stated his request for a 6' fence in the front yard for privacy and presented pictures indicating portions of a 6' fence that formerly existed when he and his wife purchased the property in October 2012. Prior to moving, Mr. Bermel talked with the neighbor about constructing a new fence for privacy. At the time, the neighbor gave her permission, but when construction was underway the neighbor said it should be 4'.

Code Enforcement Officer Jeffrey Baksa stated that a variance is only required for the 6' fence from the front corner of the garage to the back corner and for the driveway setback. Mr. Baksa stated that he visited the property and reviewed the surveys with the neighbor and it was determined that the fence is on the Bermel's property. There was an issue concerning landscaping around the fence and drainage

2013-010 (continued)

into the neighbor's yard. Due to the time of year the fence was installed, they were not able to resolve that issue but the Bermel's have agreed to take care of that situation. Along with the variance for widening the driveway the Bermel's have agreed to install drain tile to alleviate any drainage issues that could occur.

Mr. Harmon questioned if there will be parking between the garage and the fence.

Mr. Bermel responded he will be installing grass or concrete between the garage and the fence, but parking will only be in front of the garage.

No comments were received from the public.

Motion by Monopolus, seconded by Rosenswie, to close the public hearing and grant the following two variances for property located at 202 Charlescrest Court conditioned upon installation of drain tile, no cars parked between the garage and fence and landscape improvements around the fence: 1) 6' fence in front yard; 2) 1' setback for driveway.

Ayes: All

Noes: None

Motion Carried

2013-008

Request of William T Hartnett Sr. for a variance for property located at 484 Harlem Road for service of alcoholic beverages

William Hartnett stated his proposal to open a restaurant at 484 Harlem Road, noting it was a restaurant for 80 years and was most recently a pizzeria. He planned to have a full menu with sitdown service and takeout.

Town Attorney Shawn Martin referred to past problems at the property and questioned what steps Mr. Hartnett will be taking to alleviate this.

Mr. Hartnett stated he did not know about any problems until recently and he will be running the business himself as he did several years ago.

No comments were received from the public.

Motion by Rosenswie, seconded by Harmon, to close the public hearing and grant a variance for property located at 484 Harlem Road for service of alcoholic beverages.

Ayes: All

Noes: None

Motion Carried

2012-036

Request of Melinda & Edward Bauerlein for a variance for property located at 72 Sunset Creek Drive to raise chickens

Edward Bauerlein requested continuation of a variance for raising chickens. He currently has two hens but would like to be able to have up to five. There will be no roosters.

Chairman Monopolus noted the town had received no complaints on this issue.

Motion by Rosenswie, seconded by Hicks, to grant a variance for 12 months for property located at 72 Sunset Creek Drive for raising up to five chickens, no roosters.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Rosenswie, seconded by Hughes, to adjourn the meeting at 8:30 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,



Jacqueline A Felser
Town Clerk/Zoning Board Secretary