

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

**ZONING BOARD OF APPEALS**  
**Minutes #2015-03**  
**March 23, 2016**

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

**ROLL CALL:** Present - Timothy J. Elling, Chairman  
Michael P. Harmon  
Evelyn Hicks  
Richard P. Marzullo  
Jeffrey Schieber, Code Enforcement Officer

Absent - Michael P. Hughes (excused)  
John J. Fenz, Town Attorney (excused)

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

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**OPENING OF PUBLIC HEARING**

Motion by Hicks, seconded by Harmon, 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 Marzullo, seconded by Harmon, to approve Minutes #2016-02 of February 24, 2016.

Ayes: All                                      Noes: None                                      Motion Carried

**OTHER BUSINESS**

Motion by Hicks, seconded by Elling, to receive and file correspondence dated March 19, 2016 from Zoning Board member Michael Hughes.

Ayes: All                                      Noes: None                                      Motion Carried

Motion by Elling, seconded by Marzullo, to change the April 27th Zoning Board meeting to April 20<sup>th</sup> with April 6<sup>th</sup> deadline for receipt of applications.

Ayes: All

Noes: None

Motion Carried

**OLD BUSINESS**

**2012-10**

Request of Deacon Michael Comerford for a variance for property located at 151 Century Drive to raise chickens

Deacon Michael Comerford requested an extension to his variance to raise chickens at 151 Century Drive, noting he currently has five hens and no roosters.

Chairman Elling stated no complaints were reported to the Police Department over the past year.

No comments were received from the public.

Motion by Harmon, seconded by Marzullo, to close the public hearing and grant a one year variance for property located at 151 Century Drive to raise no more than six chickens, no roosters.

Ayes: All

Noes: None

Motion Carried

**2012-36**

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

Ed Bauerlein requested renewal of his variance to raise chickens, noting he has two hens and no roosters.

Chairman Elling stated no complaints were reported to the Police Department over the past year.

No comments were received from the public.

Motion by Hicks, seconded by Harmon, to close the public hearing and grant a one year variance for property located at 72 Sunset Creek Drive to raise no more than five chickens, no roosters.

Ayes: All

Noes: None

Motion Carried

**2016-11**

Request of Andrew J Pawelek Jr. for a variance for property located at 935 Harlem Road to allow an electronic message sign within 500' of residential zoning

Attorney Simon Manko represented Mr. Pawelek and presented signatures of approval from surrounding neighbors, noting the owner of one of the apartment buildings recently passed away and they were unable to obtain a signature. He further commented the area is totally industrial (Aldi's, Tops, Walgreens, etc.) with many electronic signs, so one more will have minimal or no impact on the area. Mr. Manko stated this is a viable business but will be severely stressed over the next two years due to upcoming road reconstruction by NYSDOT, so it is imperative to have a sign advertising to the public that the business is still open.

Chairman Elling stated he was in receipt of a letter of approval from property owners at 2435, 2447 and 2565 Clinton Street; 452 Collins Avenue and 909 Harlem Road. He further noted other signs in the area are not LED signs and have no scrolling messages.

Mr. Pawelek stated he had spoken to the owner of the other apartment building and his only concern was that the sign not be flashing.

Code Enforcement Officer Jeffrey Schieber advised the Town Code prohibits flashing signs and stipulates a message must be held for 30 seconds. There are also self-dimming provisions in the code.

Mr. Marzullo questioned the hours the sign will be illuminated.

Mr. Manko responded the sign will be illuminated 24 hours and commented the area is all commercial from Mineral Springs Road to Clinton Street.

Chairman Elling suggested a one year variance to see if any complaints are received.

Mr. Pawelek stated the sign costs \$30,000 so he was not in favor of a one year variance. He further noted there are trees that will block the view of the sign from the apartments.

Chairman Elling responded that trees can be cut down and stated they will need approval signatures from the owners of the apartment buildings.

Mr. Simon requested conditional approval pending receipt of the signatures.

Town Attorney John Fenz was consulted by phone and advised that conditional approval could be granted.

**2016-11** (continued)

Susan Kims questioned if the LED sign request will go to the Town Board for their upcoming meeting on March 28th and Chairman Elling responded they will have to provide the required signatures prior to being placed on the Town Board agenda.

Motion by Harmon, seconded by Marzullo, to close the public hearing and grant a variance for property located at 935 Harlem Road to allow an electronic message sign within 500' of residential zoning, conditioned upon receipt of approval signatures from the owner/property manager of 905 Harlem Road and 875 – 899 Harlem Road.

Ayes: All

Noes: None

Motion Carried

**2016-12**

Request of Richard A Johnson of X-Press Signs Inc. for a variance for property located at 2085 Union Road to allow an electronic message sign within 500' of residential zoning and with 2' front setback (10' front setback required)

Richard Johnson stated the proposed sign for Buszka Funeral Home will be located in the same place as the previous sign. It will be illuminated 24/7 and will be self-dimming with an automatic sensor. Mr. Johnson presented approval signatures from surrounding neighbors, noting he was unable to contact three property owners but left a letter in their mailboxes.

Mr. Marzullo questioned if this is a crematorium also and Mrs. Hicks responded a crematorium will be located on site.

Chairman Elling stated he was in receipt of approval signatures from property owners at 20, 27, 28, 32, 35, 39, 43, 48, 51, 56 and 66 Orchard Avenue; 17, 30, 31, 37, 38, 45, 46, 50 and 57 Kron Avenue; and 2105, 2111 and 2126 Union Road.

No comments were received from the public.

Motion by Hicks, seconded by Harmon, to close the public hearing and grant a variance for property located at 2085 Union Road to allow an electronic message sign within 500' of residential zoning and with a 2' front setback.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS**

**2016-01**

Request of Steven Haney of Seneca Steel Erectors for a variance for property located at 611 Indian Church Road to allow a temporary structure for five years (one year permitted)

Steven Haney stated his request to put up an 80' x 40' temporary structure at the rear of 611 Indian Church Road. He is currently renting the building next door, but it is now for sale and if it is sold he would like to store some things in the temporary structure.

Mr. Marzullo stated he lives in the neighborhood and expressed concern over the height of the structure.

Mr. Haney responded the temporary structure will not exceed the height of the building on Indian Church Road.

Code Enforcement Officer Jeffrey Schieber stated the height of a temporary structure can be stipulated by the Zoning Board.

Chairman Elling stated he was in receipt of letters of approval from property owners at 609, 613 and 614 Indian Church Road.

Mrs. Hicks questioned the lifespan of the structure, how it will be attached to the ground to ensure it does not blow away and if it will encroach on NYSEG or National Grid's property. She further commented on the wetlands on the property next door and questioned if any of Mr. Haney's property is located within it.

Mr. Haney responded the lifespan of the structure is 15 years and it will not encroach on neighboring properties. He will put concrete down to anchor the building if required. Mr. Haney did not believe any of his property is located in the wetlands.

Mr. Marzullo questioned if the structure will be used for cold storage only and Mr. Haney responded it will have no heat or electricity.

Chairman Elling stated variances for temporary structures are normally only given for one year so they can be reviewed at that time.

No comments were received from the public.

**2016-01** (continued)

Motion by Elling, seconded by Harmon, to close the public hearing and grant a one year variance for property located at 611 Indian Church Road to allow an 80' x 40' temporary structure.

Ayes: All

Noes: None

Motion Carried

**2016-13**

Request of Thomas J Herrmann of Dunn Tire LLC for a variance for property located at 2150 Union Road to allow temporary structures on site for an extended period of time (maximum 30 day period allowed)

Thomas Herrmann requested a variance to allow a trailer for scrap tires and two small containers for storage of tires for customers, noting the trailer is filled and removed repeatedly.

Mr. Harmon questioned how long the trailer and pods have been on site and the long term plan for use of these structures.

Mr. Herrmann responded the trailer has been on site for two years and the pods were placed within the last year. This is typical of most of their locations. Space in the building is not large enough to handle the tires and they cannot expand the building because it is leased.

Chairman Elling questioned if the structures can be moved from view of Union Road.

Mr. Herrmann responded the structures could be relocated. He further stated they are currently working with the neighbor to the rear who has a problem with vehicles driving behind the building and cutting across the lawn and they plan to put up a barrier to prevent this from happening.

Chairman Elling stated he was in receipt of letters of approval from property owners at 139, 145, 155 and 156 North Avenue and 2177 Union Road.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to close the public hearing and grant a one year variance for property located at 2150 Union Road to allow temporary structures on site, noting the structures must be moved within a 30 day period if there are any issues reported to the Code Enforcement Office.

Ayes: All

Noes: None

Motion Carried

**2016-14**

Request of Jacqueline Mundt for a variance for property located at 8 Cathedral Court to connect new pool deck to existing deck at rear of house (decks are not permitted to connect principal structure to a pool)

Jacqueline Mundt stated her request for a variance to have a pool with a deck connecting to the house deck, noting her house is the only one on the cul-de-sac that does not have a pool.

Code Enforcement Officer Jeffrey Schieber noted a self-closing, self-latching gate and pool alarm are standard requirements.

Chairman Elling stated he was in receipt of a letter of approval signed by property owners at 3, 5 and 7 Cathedral Court and 242 Summit Avenue.

No comments were received from the public.

Motion by Hicks, seconded by Marzullo, to close the public hearing and grant a variance for property located at 8 Cathedral Court to connect a pool deck to the existing deck at the rear of the house.

Ayes: All

Noes: None

Motion Carried

**2016-15**

Request of John Pappas for a variance for property located at 1780 Orchard Park Road to move patio with outdoor seating to front of building

Brian Hansen represented John Pappas and stated they were originally granted a variance for a patio in the center front of the building that took up five parking spaces. They have closed that patio and would now like to have another outdoor area for dining in the front corner of the building using four parking spaces.

Mrs. Hicks questioned the plan for protecting patrons from vehicles.

Mr. Hansen responded they plan to install a concrete pad the width of the sidewalk with railings all around. Concrete posts can be added if required.

Chairman Elling stated a response was not yet received from the NYSDOT so the application will have to be tabled.

No comments were received from the public.

**2016-15** (continued)

Motion by Elling, seconded by Hicks, to table to the public hearing until the April meeting pending receipt of a letter of approval from the NYSDOT.

Ayes: All    Noes: None    Motion Carried

**2016-16**

Request of Michael Marszalkowski for a variance for property located at 311 Woodward Drive to allow 6' fence in side yard of corner lot (maximum 4' allowed) and allow pool and deck in side yard of corner lot (30' setback required)

Michael Marszalkowski stated his request for a variance and presented signatures from the neighbor directly across the street and directly behind his property which is the owner of the fence he will be attaching his fence to. He was unable to get his next door neighbor's signature because he is out-of-town, but did speak with the son who said there is no problem since there are no windows on that side of their house. Mr. Marszalkowski spoke with NYSEG today and was informed the pool has to be 10' from power lines, so the pool will have to be moved from where it is indicated on the plan.

Chairman Elling commented on the telephone box on his property and questioned if it will be inside the fence.

Mr. Marszalkowski responded the telephone box will be inside the fence and the 6' dog ear fence will be setback 30' from the road.

Chairman Elling stated he was in receipt of a letter of approval signed by property owners at 318 Woodward Drive and 9 Blair Lane.

No comments were received from the public.

Motion by Hicks, seconded by Harmon, to close the public hearing and grant a variance for property located at 311 Woodward Drive to allow a 6' fence in the side yard of the corner lot and allow a pool with deck in the side yard of the corner lot.

Ayes: All    Noes: None    Motion Carried

**2016-18**

Request of Deborah Arzaga for a variance for property located at 227/229 Pellman Place to raise chickens



**2016-18** (continued)

Deborah Arzaga stated her request to raise chickens on her property on Pellman Place. Her house is located at 227 Pellman Place and she would like to put the structure on her vacant lot at 229 Pellman Place. The structure will be more than 25 feet from her house and will be completely fenced in with chicken wire on top. The coop will be insulated and heated and there is a water line and gas line on the vacant lot. She would like to have five free range chickens, no roosters. Mrs. Arzaga presented letters from her neighbors, noting one of them is currently in Florida and another stated she will sign the letter and put it in her mailbox.

Chairman Elling stated he was in receipt of a letter of approval from property owners at 5280 & 5308 Berg Road.

No comments were received from the public.

Motion by Hicks, seconded by Harmon, to close the public hearing and grant a one year variance for property located at 227/229 Pellman Place to raise up to five chickens, no roosters.

Ayes: All

Noes: None

Motion Carried

**2016-17**

Request of Rusty Nickel Brewing Company for a variance for property located at 4350 Seneca Street to allow outdoor patio seating

David Johnson and Jason Havens of Rusty Nickel Brewing Company referred to the permitted uses in a C-2 zoning district, specifically §120-20(A)(1) and §120-20(A)(7) of the Town Code, and stated the outdoor patio is located behind a building and completely shielded from public view.

Mr. Harmon stated a separate request would be necessary if the applicant is looking for an interpretation of the Zoning Ordinance.

Chairman Elling referred to statements made at the 2013 Zoning Board meeting when the original variance was granted. It was stated the brewery will be open no later than 10 P.M., but the current application indicates the brewery could be open until 1 A.M.

Mr. Havens stated the business is at times open past 10 P.M.

Mrs. Hicks questioned if a special permit is required for service of alcohol.

**2016-17** (continued)

Code Enforcement Officer Jeffrey Schieber responded the Town Code requires a special permit for service of alcohol; however, the Town Code does not define the operation of a brewery but does address a cider mill. The applicant came before the Zoning Board in 2013 to determine if the use fit into that zoning district.

Mr. Havens stated they are considered a NYS Farm Brewery, which is new to the state, and the laws are constantly changing. They are allowed to do the service they do under their license because NYS has allowed them that privilege. This is part of the reason they have expanded their operation to include the patio and without it would be a significant detriment to the business.

Mr. Marzullo questioned what percentage of the back parking area is for the Rusty Nickel's use.

Mr. Havens responded the lease agreement stipulates up to 25 spaces for their use and they seldom use that many. The Rusty Nickel opens several hours after the Ebenezer Ale House and most of the customers they receive come after having had dinner at the Ale House. Many of their customers are local and walk to the Rusty Nickel and he estimated 5 to 10 cars that travel from outside the area.

Chairman Elling questioned if the patio fell within the requirements of being shielded from public view and further questioned if a special permit is necessary.

Town Attorney John Fenz was consulted by telephone and suggested tabling this item to allow him time to research what the actual law is with regard to shielding the patio from the rear and front of the property.

Chairman Elling stated he was in receipt of a letter from the property owner at 825 Main Street stating they are opposed to the variance. The letter was also signed by property owners at 811, 834, 874, 878, 905, 911 and 919 Main Street.

Nora Mikes, Eric Truits, Theresa Falsone, Ken Dalka, John Riccardi, Bob Smielecki, John Dobitz, Ed Bedient, Danielle Pecoraro and Lindsay Twist spoke in favor of the variance for a patio citing the following reasons: need to attract small business to West Seneca; nice friendly business; great beer and great staff; calm and comfortable patio atmosphere; not a rowdy crowd, family friendly, kids play games; attracts other people to the area; well run and well maintained establishment; not a typical bar scene; should take pride in and help a local business.

Nathan Springer, co-owner of Ebenezer Ale House, stated both businesses have been doing well and bring people to the area. He commented it would be a detriment to their business if the Rusty Nickel cannot use the area in back.

**2016-17** (continued)

Caitlin Brown, Manager of the Rusty Nickel, commented on the awards the business won over the last year and stated their clientele are not looking for loud music and they enjoy the relaxed atmosphere. The patio is a great place for families to play games and do tastings and could even be a place to host graduations, family reunions or bridal/baby showers.

Mrs. Hicks suggested the applicant meet with their landlord to see if some type of barriers or buffer could be installed to lessen the impact of noise, light and smoke on the Main Street neighbors.

Mr. Johnson stated they had planted hop vines along the back of the property last year. They had not fully established last year, but should be this year. He further stated they had received signatures of approval from two of the four adjoining neighbors.

Mr. Havens stated they are currently addressing a concern of the neighbor to the east relative to a fence barrier to stop things from blowing across the parking lot into his yard.

Motion by Elling, seconded by Harmon, to table the public hearing pending receipt of legal research by Town Attorney John Fenz concerning shielding the patio.

Ayes: All

Noes: None

Motion Carried

**ADJOURNMENT**

Motion by Harmon, seconded by Marzullo, to adjourn the meeting at 8:35 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Jacqueline A Felser  
Town Clerk/Zoning Board Secretary