

2022-002 (continued)

Mr. Senger with APD Engineering stated the request is for a 3' setback; to the existing street would be 14' in total. The 3' works well with the existing proposed dimensions for the site. The item was tabled last month to allow the ECDPW time to provide correspondence.

Ms. Hicks noted she was in receipt of correspondence from the ECDPW with no objection to the proposed variance. The next step in the process would be site plan approval with the Planning Board.

Code Enforcement Officer Doug Busse stated details such as traffic studies and stormwater management will be addressed with the engineers at site plan approval. Due to all commercial businesses surrounding the property there was no need for neighbor letters/signatures.

Mr. Hughes noted this is a large project which was discussed in length at the January meeting with rezoning granted by the Town Board and site plan approval being conducted by the Planning Board.

No comments were received from the public.

Motion by Greenan, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 1997 – 2003 Ridge Road for construction of a new 2,730-sf restaurant and all associated site work with 3' off street parking setback.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2022-003

Request of Randy Gill for a variance for property located at 537 Potters Road for construction of an addition with 6' side yard setback (25' side yard setback required)

The applicant was not present.

Motion by Hicks, seconded by Kapuscinski, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2022-004

Request of Tammy Weisbeck of RA Metzger, Inc. for a variance for property located at 1729 Union Road to allow off-site advertising (no off-site advertising permitted)

Ms. Weisbeck requested clarification on what is allowed on her sign.

Ms. Hicks stated the Zoning Board of Appeals members had previously asked the Deputy Town Attorney to research the code. Deputy Town Attorney Stephan Stachowski stated with regards to the specific regulations he defers to the Code Enforcement Office to answer. Mr. Stachowski noted he was previously asked if the request was an area or use variance; this would be a use variance. The Zoning Board members previously

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questioned if there could be a policy in place to allow off-site advertising which would go against a building code. The Zoning Board should not be making policies. The Town Board has the responsibility to legislate as they see fit. Mr. Stachowski recommended the Zoning Board use the use variance test and determine accordingly. When using the use variance test the Zoning Board should look to former decisions/precedents. The same logic should be followed for area variance requests.

Code Enforcement Officer Doug Busse stated according to code, off-site advertising is not allowed for any business not located on the parcel containing the sign. The sign would only be allowed for Great Lakes Ice Cream.

Ms. Hicks stated to her knowledge, this type of request has never been before the Zoning Board. Mr. Hughes concurred.

Ms. Hicks stated in approximately 2015 the town did extensive research and created a sign ordinance which encompassed LED signs. It was determined that no advertising should take place on an LED sign except for the business at the address of the sign location. There is a situation on Clinton Street where there is one sign advertising for the three businesses in the building. Other than Clinton Street, all the advertising on LED signs throughout the town are single use; this is the intention of the sign ordinance. There is a billboard ordinance allowing businesses to rent space on a billboard, LED or printed. This is a separate use providing income to the town. This request will not generate income for the town but will generate income for the sign owner.

Ms. Weisbeck questioned what the problem was with generating income when her business is closed six months out of the year. She has a pleasing to the eye, custom designed sign, worth \$20,000 and she can not utilize it for six months. There are portable signs all over town on properties advertising off site businesses and events.

Mr. Busse stated he was unaware of any businesses with off site advertising on portable signs. The office is aware that community events are displayed on portable signs. If businesses are displayed, the Code Enforcement Office will address the issue.

Ms. Weisbeck stated KeyBank has a portable sign advertising the Ebenezer Ale House. The portable sign is made of metal, held down by concrete blocks and does not look nice. Ms. Weisbeck further stated she is trying to advertise in the town on a custom made, eye pleasing digital sign and is not being allowed to do so. Mr. Busse stated the sign at KeyBank will be addressed in the morning.

Ms. Hicks questioned if Ms. Weisbeck had pictures of LED signs with off site advertising. Ms. Weisbeck stated she did not, only portable signs.

Ms. Hicks stated she was in receipt of photos from the applicant showing portable signs advertising different community events, including Vigilant Fire Hall and West Seneca East. Ms. Hicks noted Ms. Weisbeck's sign is very nice.

Mr. Stachowski stated in terms of evaluating the use variance, it is important to stick to the test and determine whether this an appropriate request with rationale for why the variance has passed or failed the test. Ms. Hicks stated the Zoning Board is familiar with the test and noted the requirements as follows: 1) whether there can be a reasonable return provided to the applicant by another use; 2) is this unique; 3) will this change or be

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detrimental to the neighborhood; 4) a self-created hardship. All four must be considered and one does not have more leverage over another.

Ms. Hicks stated this is a six-month business that the applicant was aware of when opening the business and upon construction of the sign. Ms. Weisbeck stated she had no idea she could not advertise another business.

Ms. Hicks stated the sign ordinance states there is to be one sign allowed for one business at the site. If the ordinance was not written in this matter, there could be multiple signs on the property for multiple businesses. Ms. Weisbeck stated this is not true, there is only one sign allowed on the property.

Ms. Hicks stated this is not unique and the situation exists throughout the town. All LED sign owners will be applying for a variance to promote others. In Ms. Hicks opinion, the request is asking the Zoning Board members to change the sign ordinance, which is beyond their ability to do. This will most likely not change the character of the neighborhood as it is mostly industrial. Ms. Weisbeck stated she has been to area businesses, and they have no objection and would like to advertise on the sign. Ms. Hicks stated the businesses would be fine with it as they are not allowed a sign.

Ms. Weisbeck stated she does not understand who this is hurting. Ms. Hicks explained, this is not unique to Ms. Weisbeck's situation, whatever is determined will be applied to every LED sign in the town.

Mr. Busse stated although the applicant has people not opposed to the variance request, the Code Enforcement Office has received multiple phone calls from billboard companies questioning the proposal. Billboards go through an entirely different process before the Planning Board and Town Board.

Ms. Weisbeck questioned why billboard companies would be concerned with her sign. Mr. Busse stated the concern is that there would be off site advertising on an LED sign when the billboard company was forced to go through a completely different approval process.

Ms. Greenan noted the sign is beautiful, however the rule set by the Town Board is that off site advertisement is not permitted. The Zoning Board of Appeals is here to grant variances for requests that have unique situations. If the Zoning Board were to grant this variance, anyone along Union Road may do the same, creating a ripple effect. Ms. Weisbeck can always go before the Town Board and request they consider changing the code. Changing the code is within the Town Board's prevue.

Ms. Hicks noted she is in receipt of correspondence from the NYSDOT with no objection to the variance request.

No comments were received from the public.

Motion by Hicks, seconded by Kapuscinski, to close the public hearing and deny the variance request for property located at 1729 Union Road to allow off-site advertising based on the following: 1) the applicant had knowledge that her business would be closed for six months of the year and an LED sign, by town code is only allowed to advertise the business at the site; 2) this is not a unique situation as many signs throughout the town will request the same variance 3) this will not create a negative or positvie impact on the neighborhood; 4) this is a self created hardship.

Ayes: All

Noes: None

Motion Carried

2022-005

Request of Kathryn Schultz for a variance for property located at 25 Treehaven Drive to convert required parking garage into living space with allowance to park vehicles in front yard setback (no open off-street parking allowed in front yard setback)

Mrs. Schultz stated they have recently moved to West Seneca and would like to convert the garage to a living space. There is not a parking issue due to the number of people living in the home. This is a family home that will be passed down. The intent when buying the house was to convert the garage; Mrs. Schultz did not know the code upon purchase. The driveway is double wide and easily fits the family cars.

Code Enforcement Officer Doug Busse explained there is a 30' front yard setback in this zoning district meaning there is no parking of vehicles, which is what the 2-car garage was designed for. The cars will be in the driveway.

Ms. Hicks questioned if other homes have done this type of work. Mr. Busse stated there have been many.

Ms. Hicks noted, the applicant is not allowed to have cars parked in the driveway that impede on the sidewalk area or be in the right-of-way from the sidewalk to the street. Mrs. Schultz stated she understands this condition.

Mr. Kapuscinski referred to the application and stated he did not think four cars could fit in the driveway. Mrs. Schultz stated the noted on the application was in reference to small cars. Ms. Hicks stated if the request was granted, there would not be room for four cars.

Deputy Town Attorney Stephan Stachowski questioned if this was a use or area variance; is this regarding converting the garage to a living space, parking, or both. Mr. Busse stated the variance is regarding parking within the front yard setback and has nothing to do with the garage being converted. If the garage was 10' back, there would not be a need for a variance.

Ms. Hicks referred to the weighted test, this does not change the character of the neighborhood, the request is not substantial, there are no detrimental environmental concerns and there is no other alternative to achieve the same result. This is a self-created hardship, but that is not the only balance the Zoning Board may go by.

Ms. Hicks stated she was in receipt of neighbor signatures with no objection from property owners at 24, 22, 26, 27, 29, and 21 Treehaven Road along with an email from the property owner at 23 Treehaven Road.

No comments were received from the public.

Motion by Greenan, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 25 Treehaven Drive to convert required parking garage into living space with allowance to park vehicles in front yard setback.

Ayes: All

Noes: None

Motion Carried

2022-006

Request of David Avino for a variance for property located at 1105 East & West Road to construct a two-family home with 62' frontage (85' frontage required for two-family home)

Mr. Lorigo presented on behalf of the applicant and stated the property was unanimously given a change of zoning from the Town Board from R-75 to R-75A. The town code specifically states a 2-family home requires an additional 10' of frontage. Every aspect of the code is now met except for the frontage. The house will be set 180' back from the road. At the front setback of the house, there will be more than the 85' required for frontage. R-75A requires a lot width of 13,050-sf, the dwelling will be on over an acre of land. Dr. Avino's two sons will live in the house and the home will be adjacent to Dr. Avino's residence on Angle Road. This is an area variance and Mr. Lorigo believe this meets the test criteria. The structure will be a duplex and will add to the tax base and increase the value of the neighboring homes.

Ms. Hicks stated she was in receipt of neighbor signatures with no objection from property owners at 365 and 377 Angle Road as well as correspondence from the ECDPW with no objection to the variance, noting that an Erie County Highway Work Permit for non-utility work shall be applied for an obtained prior to construction of a residential driveway at the location.

Ms. Hicks noted the variance will not substantially change the character of the neighborhood or environmental condition. An alternative could be sought but this is preferred. The request is a self-created hardship.

No comments were received from the public.

Motion by Hughes, seconded by Greenan, to close the public hearing and grant a variance for property located at 1105 East & West Road to construct a two-family home with 62' frontage.

Ayes: All

Noes: None

Motion Carried

2022-007

Request of Robert Jemiolo for a variance for property located at 3377 Clinton Street to allow live music (live music not permitted)

Mr. Jemiolo stated previously he did have an approved variance for music. When Mr. Jemiolo was back for his renewal, there was an issue with the parking in the front. The parking has been corrected with a temporary solution approved by the Code Enforcement Office, when the weather breaks, a permanent solution will be completed. There was an issue with noise complaints that were nonrelated to live music. An upstairs tenant was calling the police, most complaints were unfounded.

Ms. Hicks noted she was in receipt of correspondence from the NYSDOT with no objection to the variance request, however the parking in front of the establishment is an encroachment and should be removed from the NYSDOT right-of-way. Code Enforcement Officer Doug Busse stated there has been a temporary solution and no vehicles have parked there in a month. When spring comes, there will be a permanent solution. Ms. Hicks noted any work within the NYS right-of-way will require a Work Permit. Mr. Busse stated he will confirm with the NYSDOT.

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Ms. Hicks noted there was one police complaint that came in at 2101 hours for live music. Police arrived at 2119 and reported it was quiet. Prior reports were read into the minutes of the last meeting.

Mr. Jemiolo stated he was looking for the following hours: Monday – Sunday from noon and 11:00 PM. The current hours of operation are Wednesday – Saturday from 4:00 PM – 4:00 AM. There are occasionally special events, the ask for the extra hours is in case there is an event.

A resident stated he has concerns over the music. The music is extremely loud, and Mr. Jemiolo is obligated to keep the noise from crossing the boundary. Mr. Jemiolo frequently does not follow the rules and is now requesting longer hours. Although Mr. Jemiolo has a right to run a business, the neighbor stated he also has the right to enjoy his home. The code states there should be no outside music at all. Customers were posting on Facebook videos of live music last month when the variance was denied. Patrons are frequently playing cornhole on the patio until 11:00 PM when the patio should be closed.

Mr. Busse stated there is nothing in the code that states patrons can not play cornhole in the parking lot. This could possibly be a noise issue with the neighbor, handled with the police department and reported to the Code Enforcement Office if found substantial.

Ms. Hicks stated the business has been there for years. Neighbor disputes should be worked out between the neighbors. No matter who owned the bar, the resident complained about the patrons. This is a mixed-use area of town. The goal is to come up with a solution for the bar and the resident.

The resident stated the bar has applied for numerous variances which changed the business. This was just a neighborhood bar at the time of his purchase, with no patio.

Ms. Greenan questioned if the variance was for inside and outside music. Mr. Busse stated this variance is just for inside music. Mr. Jemiolo applied for a special event permit for a fundraiser, this was a one-time event with no variance required.

Ms. Greenan asked the resident if he can hear the inside music as well as the outside music. The resident stated he is referring to indoor music. Mr. Jemiolo frequently opens the windows.

Mr. Busse stated he has nothing on paper from the West Seneca Police Department stating the bar is violating the noise ordinance or not containing the noise to the walls of the building. Mr. Busse suggested the neighboring resident reach out to the Chief of Police.

Mr. Hughes referred to the applicants Facebook and noted there are promotions for live bands; the applicant is promoting live music when there is no variance.

Ms. Hicks asked the times of the Facebook posts. Mr. Hughes stated one was posted two days ago with events booked through May. Mr. Jemiolo stated he must do this in advance.

Ms. Hicks questioned the times of the bands. Mr. Jemiolo stated they are from 7:30 PM – 10:30 PM.

Ms. Greenan questioned the weekdays of the events. Mr. Jemiolo stated they are Friday and Saturday.

A resident stated there is a noise ordinance in effect and the town can request the Building Inspector to take sound readings.

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Deputy Town Attorney Stephan Stachowski referred to the application and questioned if there is a level of sound that is too much. Mr. Busse stated there are specific decibel levels by town code.

Mr. Stachowski questioned if decibel restrictions would be in place if the variance was granted. Mr. Busse stated the restrictions would be in place.

The neighboring resident stated he has read through the code and between the hours of 11:00 PM and 7:00 AM there is a blanket coverage. There is more regarding amplified music and dogs barking. There shouldn't be a difference between a dog and loud music. This a nuisance and the decibel level should not matter.

Ms. Hicks stated it was her opinion that the neighbor would hear the bar. There must be a balance between the benefit of the business and the resident's peace. Ms. Hicks asked the neighbor, if this was to be granted, what would be acceptable to the neighbor. The neighbor stated no live music because it can not be controlled.

Ms. Hicks stated the noise meter needs to be on location and suggested a temporary variance for certain days and times to be monitored periodically by the town for indoor music only. The music must be contained to the building.

Mr. Busse stated the neighbor can be in contact with Code Enforcement. Mr. Busse will also inform the Town Board of the issue and seek approval to be on the premises after work hours.

Ms. Greenan and Mr. Kapuscinski were in favor of a temporary variance.

Mr. Hughes stated from looking at Facebook, there are events for March and April. The applicants track record with the board is not good as he has openly defied the board. Mr. Hughes would like a short time frame for a temporary variance.

Ms. Hicks stated anything other than what is allowed would require a special permit to Code Enforcement. Ms. Hicks requested Code Enforcement record decibels at least six times before May 25, 2022.

The Zoning Board of Appeals members held a discussion with Mr. Jemiolo regarding mutually agreeable hours starting with Friday and Saturday.

Mr. Jemiolo stated his frustration with being told he could only have live bands on Friday and Saturday and the day of the week should not matter. Ms. Hicks stated businesses are restricted throughout town and this is a variance.

Mr. Jemiolo questioned if other businesses were being faced with his restrictions. Mr. Hughes stated other businesses have been and when they have been good neighbors, the restrictions have been lifted; this is up to Mr. Jemiolo.

Ms. Greenan stated the day of the week matters as people work during the week.

Mr. Jemiolo stated there are also holidays.

Ms. Hicks stated she apologizes for the restrictions, but Mr. Jemiolo has had a track record of non-compliance.

