

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

**ROLL CALL:** Present - Timothy J. Elling, Chairman  
Michael P. Harmon  
Evelyn Hicks  
Richard P. Marzullo  
Jeffrey Baksa, Code Enforcement Officer  
John J. Fenz, Town Attorney

Absent - Michael P. Hughes

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 Harmon, seconded by Hicks, to open the public hearing.

Ayes: All    Noes: None    Motion Carried

**APPROVAL OF PROOFS OF PUBLICATION**

Motion by Marzullo, 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 Marzullo, seconded by Harmon, to approve Minutes #2017-03 of March 22, 2017.

Ayes: All    Noes: None    Motion Carried

**OLD BUSINESS**

**2012-10**

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

Chairman Elling stated Deacon Comerford informed the town he no longer has chickens, so renewal of the variance is not required.

**2012-10** (continued)

Motion by Elling, seconded by Marzullo, to receive and file this item.

Ayes: All

Noes: None

Motion Carried

**2013-13**

Request of Brian & Lisa Hirsch for a variance for property located at 122 Tampa Drive to raise chickens

Lisa & Brian Hirsch stated their request for renewal of the variance to allow them to raise six chickens on their property.

Chairman Elling stated the town received no complaints concerning the chickens at this address over the past year.

No comments were received from the public.

Motion by Elling, seconded by Hicks, to close the public hearing and grant a one year variance for property located at 122 Tampa Drive to raise up to six 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 of Rusty Nickel Brewing Company requested renewal of the variance to allow outdoor patio seating at 4350 Seneca Street, noting as requested at the meeting last year they added large wooden trellises with grape vines that have grown 4' to 5' tall and hops for over 30' so the area should be fully screened with vegetation this year.

Mr. Marzullo questioned if they had a permit for the outdoor firepit and Mr. Johnson responded they did not.

Code Enforcement Jeffrey Baksa advised there is no permit process for outdoor firepits, but outdoor fires must be in an approved container.

**2016-17** (continued)

Chairman Elling presented pictures of the site and commented the screening is not solid. He further commented on debris on the property and questioned if there is a permit for outdoor music.

Mr. Johnson responded when the patio is in operation, the vegetation on and around the trellis is in bloom and provides screening. He further stated there is debris left from a recent party that has been there for a few days and will be picked up and recycled. There is live outdoor music for specific events and the town is notified of those dates annually.

Code Enforcement Officer Jeffrey Baksa stated he visited the site this date and noted the following violations: building address is not visible from the street; debris in the yard needs to be removed; downspouts and gutters are in need of repair; non-permitted use must cease, a special use permit is required; not conforming to Zoning Board requirement for solid screening.

Chairman Elling referred to the original motion granting the variance and stated it was stipulated there should be screening with deer impervious plants and trees at least 4' high along the westerly portion of the patio. Town Attorney John Fenz advised the screening was for sight but also to limit the noise from patrons occupying the outdoor patio.

Mr. Harmon questioned if there is a limit to the number of people allowed on the patio. Mr. Baksa advised the occupant load is based on square footage.

Chairman Elling questioned if liquor is served. Mr. Johnson responded they are a NYS farm brewery and are allowed to serve any products that are grown and fermented in NYS. Mr. Fenz referred to NYS laws that address farm breweries and stated they do not have the same licensing requirements.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to close the public hearing and grant a one month variance until the May 24, 2017 Zoning Board meeting to allow time for existing violations to be addressed.

Ayes: All

Noes: None

Motion Carried

**2017-05**

Request of Nick Croglio for interpretation of "buffer" as directed by the Planning Board at their January 12, 2017 meeting with regard to property located at Jaycee Lane adjacent to Lot #48 & Lot #1

Motion by Chairman Elling, seconded by Mrs. Hicks, to close the public hearing.

Ayes: All

Noes: None

Motion Carried

Motion by Hicks, seconded by Harmon, to adopt the following language regarding the term "buffer":

Buffer zoning is a technique used to create a neutral space between two different types of buildings or properties with an interest of minimizing disturbances between potentially incompatible land uses.

A buffer zone is intended to avert the effect of negative environmental or human influences, whether or not it embodies great natural or cultural value itself. The importance and function of a buffer zone and the necessary protective measures derived thereof can differ greatly for each site.

Buffer zoning is an important part of any planned community to add enjoyment and eliminate potential problems between potentially incompatible properties. One common situation where buffer zoning is useful occurs when a large multiple-family apartment complex (designed to fit the needs of families with children) is built near a quieter condominium that is meant to house retired and elderly individuals.

A buffer zone, such as a simple tract of undeveloped land with trees and shrubbery, can be used to separate the hustle and bustle of the family community from the relative peace of the retirement-oriented area. A buffer zone can be used to add enjoyment and value to a community, such as the addition of open space or parks. The way a buffer zone is designed is often influenced by one or both of the properties located on either side of it.

The term buffer is commonly interpreted as "that portion of a given lot, not covered by buildings, pavement, parking, access and service areas, established as landscaped open space for the purposes of screening and separating properties with incompatible land uses, the width of which is measured from the common property line and extends the developed portion of the common property line. A buffer consists of trees, shrubs, and other natural vegetation undisturbed by grading or site development and replanted where sparsely vegetated or where disturbed for approved access and utility crossings." Ga. Outdoor Network, Inc. v. Marion County, 2009 U.S. Dist. LEXIS 72947, 18-19 (M.D. Ga. Aug. 17, 2009)

**2017-05** (continued)

For use in nature conservation, a Conservation Buffer Area may be established to enhance the protection of specified areas for their biodiversity importance. A Conservation Buffer Area is an area of land maintained in permanent vegetation that helps to conserve habitat, control air, soil, and water quality, as well as providing other environmental benefits. A Conservation Buffer Area in a stream corridor may be used to trap sediment, and enhance filtration of nutrients and pesticides by slowing down runoff that could enter the local surface waters. The root systems of the planted vegetation in these buffers hold soil particles together which helps to alleviate wind erosion of the soil and may stabilize stream banks, providing protection against substantial erosion. Conservation Buffer Areas not only stabilize the land but can also provide a visual demonstration that land is under stewardship.

On the question, Town Attorney John Fenz advised that a more concise definition of buffer is needed and the Zoning Board should be defining buffer so it may apply for this specific item. He also advised that anything beyond that is not within the authority of the Zoning Board and a determination directly to this project is an ultra vires act.

The motion was recinded.

Motion by Hicks, seconded by Harmon, to adopt the following language regarding the term "buffer": "That portion of a given lot, not covered by buildings, pavement, parking, access and service areas, established as landscaped open space for the purposes of screening and separating properties with incompatible land uses, the width of which is measured from the common property line and extends the developed portion of the common property line. A buffer consists of trees, shrubs, and other natural vegetation undisturbed by grading or site development and replanted where sparsely vegetated or where disturbed for approved access and utility crossings."

Ayes: All

Noes: None

Motion Carried

Motion by Harmon, seconded by Hicks, based on the interpretation of a "buffer area" as adopted this date, to interpret the buffer area as it relates to the Croglio Lot #1 as being limited to the retention of the existing tree line between the neighbor at Sublot #42 and the applicant at Lot #1 and shall not include the retention of the existing shrubbery under the tree line or adjacent and up to the lot line of the neighbor at Sublot #42. Further, as this boundary is between parcels of the same use, the buffer shall not be delineated by any other prescribed boundary lines, that being 10' or 20' from the existing property line. The area under the existing tree line should match the landscaping of the existing neighborhood and shall comply with all other existing town zoning codes, regulations and setbacks.

**2017-05** (continued)

Secondly, the buffer area interpretation between the applicant at Lot #48 and the neighbor at Sublot #41 should match the landscaping of the existing neighborhood and shall comply with all other town zoning codes, regulations and setbacks. Again, as this boundary is between parcels of the same use, the buffer shall not be delineated by any other prescribed boundary lines, that being 10' or 20' from the existing property line.

On the question, Mrs. Hicks stated the applicant is still subject to the Tree Ordinance and landscape plan they will submit.

Ayes: All

Noes: None

Motion Carried

Attorney Ralph Lorigo represented Nick Croglia and requested clarification on whether the existing tree line is to be maintained with healthy trees. Mr. Harmon responded the existing tree line should be maintained as long as they are healthy trees. Mrs. Hicks stated the tree line should be maintained according to the Tree Ordinance. Mr. Lorigo further questioned if landscaping by the owner is permitted with no obligation for a 10' or 20' buffer. Mrs. Hicks stated that landscaping should be according to the Town Code and they are not prescribing any further restrictions or impositions. Mr. Harmon also stated no 10' or 20' buffer is required.

**2017-10**

Request of Pat Boni of Saxton Sign Corp. for a variance for property located at 1200 Southwestern Blvd. to allow a 110.5 sf LED sign within 500' of residential zoning (maximum 40 sf allowed with minimum 500' from residential zoning)

The petitioner was not present at the meeting.

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

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS**

**2017-12**

Request of Bruce & Kristen Heckman for a variance for property located at 2 Cathedral Court to construct a 6' high fence in side yard of corner lot (maximum 4' high fence allowed)

**2017-12** (continued)

Kristen Heckman stated their request to construct a 6' high fence in the side yard of their corner lot for privacy. The fence will extend from the house to the property line and then back to the garage as indicated on the survey.

Chairman Elling stated he was in receipt of letters of approval from property owners at 1 Cathedral Court and 86, 90 & 94 Cathedral Drive.

No comments were received from the public.

Motion by Harmon, seconded by Marzullo, to close the public hearing and grant a variance for property located at 2 Cathedral Court to construct a 6' high fence in the side yard of the corner lot.

Ayes: All

Noes: None

Motion Carried

**2017-13**

Request of Sandra Mancuso of EI Team Inc. for a variance for property located at 1845 Union Road to allow an electronic message board within 500' of residential property

Chairman Elling stated Erie County had no issue with the sign; however, a response had not yet been received from NYSDOT.

Motion by Elling, seconded by Hicks, to table this item until the May 24, 2017 Zoning Board meeting pending receipt of comments from NYSDOT.

Ayes: All

Noes: None

Motion Carried

**2017-14**

Request of Sean Hopkins, Esq. representing SPNY100 LLC for a variance for property located at 1881 Ridge Road to construct a 100 sf pedestal sign for Home Depot and a 60 sf pedestal sign for Pep Boys (maximum 40 sf sign allowed)

The petitioner was not present at the meeting.

Motion by Elling, seconded by Harmon, to table this item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

**2017-15**

Request of Peter Liberatore for a variance for property located at 599 Reserve Road to allow a flag lot with 35' frontage (40' frontage required)

Chris Wood of Carmina Wood Morris represented Peter Liberatore and stated the Planning Board granted preliminary approval to subdivide property on Reserve Road; however, a variance is required for one flag lot with 35' frontage. Mr. Liberatore was out-of-town and unable to attend this meeting, but he had held three meetings with the neighbors to discuss the project.

Mrs. Hicks questioned what impact this will have on the wetlands. Mr. Wood responded no mitigation is required for the wetlands as they will only be disturbing less than one tenth of an acre and they have applied for a nationwide permit.

Chairman Elling asked that the property be staked to indicate where the 35' frontage is located. Mrs. Hicks agreed that it was difficult to determine which portion of the land was 599 Reserve Road.

Louis Susabach lives on Reserve Road adjacent to this site and stated the driveway for the proposed flag lot will be only 9 feet from his house. He commented on the depth of the driveway and expressed concern that vehicles will speed up and down it. Mr. Susabach further commented on the chestnut trees that are over 100 years old and did not want to see them taken down.

Mr. Wood responded the driveway will only be 15' wide and can be located on the other side of the property. He further noted Mr. Susabach's relative was the seller of the property and retained a portion so he could have a building lot.

Motion by Elling, seconded by Hicks, to table this item until the May 24, 2017 Zoning Board meeting to allow the location of the property to be staked.

Ayes: All

Noes: None

Motion Carried

**2017-10**

Request of Pat Boni of Saxton Sign Corp. for a variance for property located at 1200 Southwestern Blvd. to allow a 110.5 sf LED sign within 500' of residential zoning (maximum 40 sf allowed with minimum 500' from residential zoning)

The petitioner was not present at the meeting.



**2017-10** (continued)

Motion by Elling, seconded by Marzullo, to table this item until the May 24, 2017 Zoning Board meeting.

Ayes: All

Noes: None

Motion Carried

**2017-14**

Request of Sean Hopkins, Esq. representing SPNY100 LLC for a variance for property located at 1881 Ridge Road to construct a 100 sf pedestal sign for Home Depot and a 60 sf pedestal sign for Pep Boys (maximum 40 sf sign allowed)

Attorney Sean Hopkins represented SPNY100 LLC and stated the lease for Home Depot expired and they are currently relying on offsite parking on property owned by National Grid, but they could cancel at any given time. Mr. Hopkins indicated the commercial building that will be demolished and converted to parking area and the location of the proposed 100 sf pedestal sign for Home Depot and 60 sf pedestal sign for Pep Boys, noting Denny's sign will remain while the other 190 sf sign will be removed. Along with a variance for the size of the signs, a variance is required to allow a third pedestal sign on the parcel. Mr. Hopkins stated granting the variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties as this is a commercial area with numerous pedestal signs that exceed the allowable 40 sf size.

Chairman Elling commented that three signs will be located along the frontage on Ridge Road and referred to other commercial developments within the town that are larger than this parcel and have less signs.

Mr. Hopkins responded there will only be three businesses on the property. Denny's sign will remain and Home Depot and Pep Boys would each like their own sign. He further stated this is a 12 acre parcel and the proposed signs are an improvement over what is currently there.

Mr. Marzullo referred to a maple tree in front of Pep Boys and questioned if it will need to be removed. Mr. Hopkins was unsure about removal of the maple tree but stated they are willing to provide landscaping around the new signs.

Mrs. Hicks questioned if approvals are needed from NYSEG and if the signs will be LED. Mr. Hopkins responded the signs are not LED and they will be located outside the right-of-way and will not interfere with other entities.

No comments were received from the public.

**2017-14** (continued)

Motion by Elling, seconded by Hicks, to close the public hearing and grant a variance for property located at 1881 Ridge Road to construct a 100 sf pedestal sign for Home Depot and a 60 sf pedestal sign for Pep Boys, conditioned upon landscaping around the signs approved by the Code Enforcement Office.

Ayes: All

Noes: None

Motion Carried

**OTHER BUSINESS**

**2016-37**

Chairman Elling stated the applicant has not conformed to the variance as granted for the fence along Arcade Street. Town Attorney John Fenz advised the Code Enforcement Office will have to enforce the variance as granted by the Zoning Board.

**ADJOURNMENT**

Motion by Harmon, seconded by Hicks, to adjourn the meeting at 8:15 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Jacqueline A Felser  
Town Clerk/Zoning Board Secretary