

WEST SENECA TOWN OFFICES ZONING BOARD OF APPEALS
1250 Union Road Minutes #2015-02
West Seneca, NY 14224 February 25, 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 Evelyn Hicks and 30 seconds of silent prayer.

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

Absent – Rick Marzullo

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 Harmon, seconded by Hughes, 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 approve the amended Minutes #2015-01 of January 28, 2015.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2014-048

Request of William Hartnett Sr. for a variance for property located at 484 Harlem Road to allow live music and outdoor seating. Requesting enlargement of business, 300 sq ft allowed, 720 sq ft requested (Zoning ordinance 120-20(7) outdoor seating not permitted, 120-20(8D); live music not permitted).

Mr. Hartnett handed out site plans to the board members and explained his intentions of having live music. He explained that he would like to be allowed to play live music between the hours of 2PM and 7PM on the weekends. There were letters of support and letters of opposition signed by surrounding neighbors. Mr. Hartnett explained that the proposed deck is 20' by 36' and a part of the deck is not going to be enclosed. Chairman Tim Elling explained that this was the first time the board members had a chance to see the amended drawings for the variance Mr. Hartnett is requesting. Time Elling explained that he checked with the police department about complaints and there were no reports that were related to live music being played on the property. Evelyn Hicks asked about whether or not this variance would go before the Planning Board. Jeff Baksa explained that in order for the Planning Board to review the site plan that Mr. Hartnett is proposing, the Zoning Board has to approve the variances so that he can go forward with the site plan. Evelyn Hicks confirmed that Mr. Hartnett is looking for both an area variance and a use variance. Attorney Fenz stated that in terms of the Town Code, the board is addressing a use variance but it's a non conforming existing use so it does put it into an area use consideration.

Susan Kims of 99 Covington spoke on behalf of the neighbors who live behind Mr. Hartnett's property. She explained that there is no sound barrier and that the noise affects the neighbors. Evelyn Hicks requested that there be a new variance form filled out that explains exactly what Mr. Hartnett is requesting. Attorney Fenz stated that Mr. Hartnett is no longer requesting the volleyball courts and miniature golf course. The application is asking solely for the enlargement of his business and for the live music.

Motion by Elling, seconded by Hughes to close the public hearing and table the variance for property located at 484 Harlem Road until the March 25, 2015 Zoning Board Meeting to allow the new plans submitted by the applicant to be reviewed by the board.

Ayes: All Noes: None Motion Carried

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2015-001

Request of David Schwalenberg for a variance for property located at 3069 Clinton Street to erect a taller garage than permitted (12' to middle of roof for accessory structures allowed, 16'-8" requested)

Mr. Schwalenberg's variance request was tabled during the last meeting until he could get proper signed letters of consent from his neighbors. Mr. Schwalenberg brought signed letters of consent stating the exact measurements and dimensions of the proposed garage he would like to build. The signatures were from Mr. Swift of 3089 Clinton Street, Mr. & Mrs. Earsing of 3065 Clinton Street.

No comments were made from the public.

Motion by Hughes, seconded by Hicks to close the public hearing and grant the variance as requested for property located at 3069 Clinton Street.

Ayes: All Noes: None Motion Carried

2015-002

Request of Jill Kowalczewski for an interpretation of whether or not there is a business in operation at the property located at 10 Robin Court (120-13 permitted uses in R-65 single family home). Attorney John Fenz explained that there is only one case in the state of New York that deals with dress making and it was from 1915. It states that dress making is a business, however the facts of the case don't line up with this one. Ralph Lorigo brought a letter from Corrin Murphy, the Musical Business Director for West Seneca East High School, stating that Mrs. Kowalczewski donates more than 300 hours per school year assisting with costume design and construction. Chairman Elling read a letter of opposition from neighbors at 14 Robin Court, 38 Lori Drive, 44 Lori Drive, 59 Robin Lane, 51 Robin Lane, 33 Lori Drive, 17 Lori Drive, 89 Robin Lane, 60 Robin Lane, 81 Robin Lane, and 116 Robin Lane. Jeff Baksa reminded the board that when they are deciding on which decision they are going to make, it's important for them to keep in mind that the Town Code says that upon application the Town Board may permit a home occupation in any R district with the exception of several districts listed, including R 65. The code lists a number of things they must comply with in order to have a home occupation in an R district. The Town Code also states "no use shall be permitted in any zoning district unless it is listed specifically or generally as a permitted use

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in that zoning district. In the case of a use not listed separately no building permits or zoning compliance shall be issued for such use unless or until this chapter has been amended". Jeff explained that the Zoning Boards decision at this point would be whether or not it's considered a business. John Fenz stated that there is no authority of the Zoning Board to address the home occupation idea, which would be the Planning Boards responsibility. The role of the zoning board in this matter is solely to give an interpretation of whether a business exists at the property. Ralph Lorigo explained that the board can grant a variance but it would in fact be a use variance. Jeff Baksa explained that the Board should be making an interpretation as to whether or not a business is being run out of 10 Robin Court. Ralph Lorigo again stated that Mrs. Kowalczewski does not have any employees, she does not have a sign on her property and she also does not have a phone number for her dress making.

Carol Novak from 9 Robin Court spoke about the amount of traffic that comes into Robin Court due to Mrs. Kowalczewski's dress altering that she does at her house. Clauding Budzinski of 14 Robin Court also spoke in opposition to Mrs. Kowalczewski's dress altering that she conducts at her house. Mrs. Budzinski also explained that she called Mrs. Kowalczewski's employer and they stated that due to the overwhelming number of dresses, the company sends out the dresses to Mrs. Kowalczewski's house to be altered.

Susan Kims of 99 Covington spoke in opposition to spot zoning and the fact that she believes that is what is happening.

John Fenz stated that at this point the Board is giving an interpretation on a non permitted use so section 120-5 of the code does not apply to this interpretation as stated earlier.

Mike Harmon stated that he is against a business being run out of someone's house but he does not consider it a business. He stated that she brings work home on occasion from her place of employment.

Motion by Harmon, seconded by Hughes to close the public hearing and determine there is not a business being run out of 10 Robin Court.

Ayes: Mike Harmon, Mike Hughes, Tim Elling

Noes: None Abstained: Evelyn Hicks Motion Carried

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2015-005

Request of Gene Staychock for a variance for property located at 789 Center Road to use electronic specialty sign (temporary, closer than 1,000' to residential zoning and 500' from residential property)

Gene Staychock of 359 Lein Road explained that he went to the Town to get a temporary sign permit for limited use for special occasions. Mr. Staychock is also asking for a variance so that he can put a permanent LED sign on the side of his building when he is able to purchase one. Tim Elling explained that Mr. Staychock would have to come back with a variance requesting an LED sign, seeing as the board does not know what size he is requesting, nor do they have any drawings or dimensions of it. Mr. Staychock explained that the sign would be no bigger than 4' by 6'. Jeff Baksa explained that Mr. Staychock could request the sign tonight but he would have to understand that the sign has to conform to all of the sign regulations and it would have to go before the Town Board. Attorney Ralph Lorigo spoke on behalf of Mr. Staychock and explained that the request would have to be for an electronic sign that would be placed on the side of his building facing Union Road, it will be no greater than 4' by 6'. Mr. Staychock would like to leave the temporary sign up until he is able to purchase the permanent sign and install it on the side of the building. He estimates that he would be able to invest in the permanent sign by the summer. Mr. Lorigo explained that they would like to use the temporary sign for a continuous 90 days and they would like a variance for a LED sign no greater than 4' by 6' to be installed on the side of his building. Tim Elling questioned whether or not the temporary sign Mr. Staychock currently has up is in the right of way. Mr. Staychock explained that the sign is on his property and it's the only spot that the sign is not in any kind of an intrusive area. Mr. Staychock brought a signed letter of support for the LED sign from his neighbor Lisa Breidenstein at 1798 Center Road and a letter from TNT at 795 Center Road.

Mike Hughes explained that in terms of the amended variance, Mr. Staychock is seeking that portable temporary sign does not exceed 90 consecutive days from the time of this meeting.

There were no comments from the public.

Mr. Staychock explained that he has gone to the gentleman's home on Fremont at least a dozen times to get his signature and he has been unable to reach him. Mr. Lorigo asked that the Board grant the temporary portable sign variance contingent upon Mr. Staychock obtaining the signature from the gentleman on Fremont.

Evelyn Hicks explained that even if the permanent sign is not installed within 90 days, the temporary sign will still have to be taken down.

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Motion by Harmon, seconded by Hughes to grant an amended variance for property located at 789 Center Road for a temporary sign not to exceed 90 consecutive days contingent upon the letter of support from the neighbor on the northwest corner of Fremont as well as the LED sign not to exceed 4' by 6' to be placed on the west side of Mr. Staychock's building, facing Union Road. The signed letter of support regarding the temporary sign should be submitted to the Building and Plumbing Department within two weeks.

Carol Novak from 9 Robin Court spoke again asking about what recourse they have in regards to Mrs. Kowalczewski. She was informed that there is an appeals processes and that she should obtain private council.

NEW BUSINESS

2015-006

Request of Jason Schneckenberger for a variance for property located at 444 Indian Church Road to decrease parking from 44 spaces to 24 spaces, decrease side and rear yard setbacks for building and parking.

Mr. Schneckenberger explained that he would like to put a small office building on his property and that he would like to decrease the amount of parking spots required. Mr. Schneckenberger explained that the office building would be open from 8AM until 4:30PM and that the lunch crowd at the restaurant is very minimal so there would not be an overabundance of traffic or parking in the parking lot. Mike Harmon stated that he heard the variance for the parking space reduction and for the setback but there was no mention of the hard surface issue. Mr. Schneckenberger explained that he already went before the Town Board about this and they informed him that it has to be paved by October of 2015. Jeff Baksa explained that Mr. Schneckenberger needs an 8 month variance for the hard surface paving which brings him to October. The neighbor in the residential house next door to the property signed a letter of support from Michel Smith of 428 Indian Church. Mr. Schneckenberger explained that he does not use the entire left side of the parking lot and that it has not been plowed once all winter long. Mike Hughes asked about the proposed use for the office building to which Mr. Schneckenberger explained he does tax representation work which will be done in the front two offices and the back office is for the collections agency he owns. He explained that office is currently located in the Southgate Plaza but the owners will not renew the lease. Mr. Schneckenberger explained that he has four employees and himself for the collections agency and he does not have any employees for the tax representation. He also explained he mainly goes to his clients businesses when he does the tax representation work.

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Jeff Baksa explained that when totals are made for required parking and setbacks in regards to a business, the numbers are derived from the possible use of the structures. Jeff explained that it is important to set up the parking space as striped, paved and cleared to ensure that patrons aren't parking on other people's property. Mr. Baksa explained that although the railroad land has not been used it is still owned by the railroad and they have no restrictions on what they can use. Motion by Hicks, seconded by Harmon to close the public hearing and grant the variances as requested with the stipulation that they take into consideration that hard surface paving not to exceed eight months from the date of this meeting.

No comments were made from the public.

Ayes: All Noes: None Motion Carried

2015-007

Request of Karl Kellner of 222 Chicago Street to erect a fence higher than permitted at the property located at 721 Mineral Springs Road, 4' high max permitted, 6' requested and extending 10' out. Karl Kellner explained that Jim Massacre is the tenant at the property who gets truck loads of items at this property and stacks the items at the property. He would like to put up a fence to screen his business from the residential neighbors and to give Mr. Massacre some privacy on the property. It will be a stockade fence that will be 6' in height. Tim Elling pointed out that it is a daycare next-door and the fence would not only give his tenant privacy but it would give the daycare privacy as well. Mr. Kellner was unable to get a signature from the neighbor, as the neighbor put up a fence on Mr. Kellner's property. Mr. Kellner stated that he sent the neighbor a letter asking him to remove the fence to which he received a nasty response. The board explained that since the neighbors fence is on Mr. Kellner's property he has the right to take down the neighbors fence. Mr. Kellner explained that at the back end of the building there is about 6.5' between the building and the property line which is enough room for a small vehicle to get though there to deliver items to Mr. Massacre.

No comments were made from the public.

Motion by Elling, seconded by Harmon to close the public hearing and grant the variance as requested for the property located at 721 Mineral Springs.

Ayes: All Noes: None Motion Carried

ADJORNMENT

Motion by Hughes, seconded by Hicks to adjourn the meeting at 8:48 P.M.

Respectfully Submitted,
Marleah Martinez
Zoning Board Secretary