

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

ZONING BOARD OF APPEALS
Minutes #2012-01
January 25, 2012

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 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
Shawn P. Martin, Town Attorney
John Gullo, Code Enforcement Officer

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 Rosenswie, seconded by Hughes, to open the public hearing.

Ayes: All Noes: None Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Hughes, seconded by Rosenswie, to approve the proofs of publication and posting of legal notice.

Ayes: All Noes: None Motion Carried

APPROVAL OF MINUTES

Motion by Harmon, seconded by Hicks, to approve Minutes #2011-11 of December 14, 2011.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2011-56

Request of Richard Schmitt for a variance for property located at 1051 Center Road to allow reduction of required bulk area and required frontage from 40' to 35'

2011-56 (continued)

The petitioner was not present.

Motion by Hughes, seconded by Hicks, to hold this item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2011-061

Request of Michael Eberhard of Alco Sign Service for a variance for property located at 650 Orchard Park Road to allow a roof mounted sign

Michael Eberhard of Alco Sign Service referred to the FedEx location at 650 Orchard Park Road and stated that before they remodeled the roof there was an awning structure that went completely around the building with identification on the south and east sides. There was trouble with water leaking under the roof line and the awning was blowing apart in some of the wind storms, so they took the awning down and redid the roof to make it sloped. Unfortunately with the sloped roof, there is no longer a place for a fascia sign. Mr. Eberhard stated their proposal to put the sign on the low end of the roof so there is identification on Orchard Park Road, noting they will not go higher than the peak of the roof.

Code Enforcement Officer John Gullo stated this was very similar to the Schunke Insurance building on Union Road.

Mr. Eberhard indicated in a picture the peak of the roof and the elevation from the side and stated the sign will be 2' tall x 13'2" wide. There is currently one sign facing Ridge Road. The proposed sign will replace the one that faced Orchard Park Road and will sit just above the rain and ice shield.

Mrs. Hicks questioned how the sign will be lit.

Mr. Eberhard advised there will be individual channel letters mounted on a raceway and each of the letters has LED's inside them. The letters have translucent faces that cover them and the LED's back light them. There will be no scrolling messages.

Motion by Hughes, seconded by Rosenswie, to close the hearing and grant the variance requested for 650 Orchard Park Road to allow a roof mounted sign.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2012-001

Request of Irene Gick for a variance for property located at 90 Cloverside Drive to allow a fence in the required front yard & extend to curb at road

Diane Gibbs, White Street, Springville, represented her 93 year old aunt, Irene Gick, and read a letter from Mrs. Gick stating her request for the variance. Mrs. Gick is trying to be independent in her home, but her driveway is sloped and she and others have fallen in the past. The railing/fence was constructed to assist her in taking her garbage out to the road and for the safety of other's. Mrs. Gick did not realize she needed a permit when a friend put it up for her. Mrs. Gibbs submitted a letter signed by neighbors and friends stating the railing was acceptable to them. She stated that Mrs. Gick has osteoporosis and has had multiple breaks and fractures. The railing is for her safety and it is only on the left side of the driveway.

Chairman Monopolus noted there were over 40 signatures on the letter submitted.

Mr. Hughes questioned the possibility of a temporary variance for the fence and requested Code Enforcement Officer John Gullo's input on the fence encroaching in the right-of-way.

Mr. Gullo stated the last section of the fence is in the right-of-way and nothing should be located within it. The property is also on a diagonal and Mrs. Gick does not own much on the right side, so there should be a place to plow the snow.

Town Attorney Shawn Martin also expressed concern about the fence being in the right-of-way and stated that a temporary variance could be granted that would accompany Mrs. Gick's ownership of the home and cease upon transfer of ownership. This would be a temporary variance for mobility and safety, but the fence still should not be located in the right-of-way. He suggested removing the last section of fence.

Cindy Southard, Mrs. Gick's goddaughter, stated she is fearful for her because she is very frail, but wants to be independent. Ms. Southard asked if there was any way the Zoning Board could allow the fence to remain as is so Mrs. Gick could maintain her independence.

Mr. Martin stated that if they allow one structure to be placed in the right-of-way it will set a precedent and others will follow. They have to respect the safety of the town employees and equipment and cannot allow structures to be placed in the right-of-way.

2012-001 (continued)

Mrs. Hicks stated that the last section of fence will have to be removed, but a variance will still be required because the fence extends more than 10' off the front of the house.

Mr. Gullo noted that the town will still pick up the garbage even if the last section of fence is removed and Mrs. Gick places her garbage by the last post.

A friend of Mrs. Gick stated he is aware of other locations in town where there is something in the right-of-way, but it is considered decorative. He installed this fence that is 30.5" high and it is there for Mrs. Gick's safety, not decoration. He further noted that West Seneca is the only town that defines this type of railing as a fence.

Motion by Hicks, seconded by Rosenswie, to close the hearing and grant a variance for all sections of the fence except the section closest to the road which must be removed, noting that this variance is in effect until the property is transferred to a new owner.

Ayes: All

Noes: None

Motion Carried

2012-002

Request of Timothy Mielko for a variance for property located at 4518 Clinton Street for a driveway with no setback (3' required), a 5' side yard setback (10' required), and non-hard surface pavement

Timothy Mielko of Timon Electrical Construction stated that the business has been located in Cheektowaga for 28 years and he is looking to relocate to Clinton Street in West Seneca, where he owns a parcel immediately to the east and adjacent to Buffalo Air Park. The overall parcel is about 5.25 acres and a feeder stream goes through it. Mr. Mielko indicated on the plan where the business will be located, the area that will be sublet, and the Buffalo Air Park fence that is 10' off the property line and acts as a buffer on the west and north. He further indicated the ingress/egress, parking area, detention area, and septic area. The septic area is much larger than they thought and he anticipated taking out much of the east side of the driveway between the detention area and the driveway.

Code Enforcement John Gullo noted that Mr. Mielko still has to go to the Planning Board for site plan review, but he needs variances from the Zoning Board of Appeals before he can go forward.

2012-002 (continued)

Mr. Mielko requested variances to the setbacks for the driveway and parking areas, a variance on the paving requirement, and a variance on the number of parking spaces required for the office. Parking for the warehouse area will not be affected. Mr. Mielko referred to the driveway on the west lot line and stated that the ordinance requires a 5' setback and New York State requires the driveway to be 25' wide. This combined requirement will bring the driveway within 3' of the drainage swale and he was not comfortable with that.

Mrs. Hicks suggested moving the driveway to the other side of the property and have it go over the feeder stream.

Mr. Mielko responded that if the driveway were moved to the other side it would increase the cost of the project by \$45,000 due to the requirements necessary to cross the feeder stream. He was requesting a zero or near zero setback on the west property line.

Mrs. Hicks questioned if the buildings were being located in the back corner because Mr. Mielko wanted to develop something else in the front corner.

Mr. Mielko indicated the portion of the property that will be sold off.

Mr. Harmon questioned if that portion could be built on or if it was located in the flood plain.

Mr. Mielko stated that a wetlands delineation was done and that portion was fine, but there are wetlands along the driveway. If they have to meet the setback requirements it will push the driveway into the wetlands.

Mrs. Hicks was concerned about the feeder stream because it is a watershed for the entire area in the back of this parcel.

Town Attorney Shawn Martin stated these are issues that will have to be addressed with site plan review to the satisfaction of the NYSDEC and the Town Engineers.

Chairman Monopolus questioned if there are any FAA regulations with regard to setbacks.

Mr. Martin did not know the FAA regulations but stated that will be part of the determination for SEQ. R.

Mr. Mielko further asked that the required 10' setback for the parking area be reduced to 5' so it does not force the driveway into the septic and detention areas.

2012-002 (continued)

Mr. Gullo noted that the property is zoned M-1 and residential homes are not allowed in that zoning, so the lots to be sold will have to be for commercial use.

Mr. Mielko requested a variance for the paved parking requirement. This was a budgetary issue and he will not be able to do the project if it cannot be kept within a feasible amount. Instead of blacktop or concrete pavement, Mr. Mielko was proposing rolled stone with blacktop millings for a dust free application. He referred to other properties on Clinton Street including the Buffalo Air Park that have driveways that are stone and dirt with no millings.

Mrs. Hicks noted that those driveways may pre-date the ordinance.

Mr. Gullo stated that the driveway at Buffalo Air Park is used for construction access. He did not believe Mr. Mielko's proposal would prevent mud and dirt from coming out onto Clinton Street.

Mr. Mielko stated he is working with Trudo Engineering on this issue and they could answer any questions about the pavement. The last variance he was requesting is for parking. The ordinance requires one space for every 100 gross square feet of office space. The proposed office will have 1500 sf so 15 spaces are required, but the operation is very small. There are only two full-time and one part-time employees in the office and only four parking spaces are needed. Other employees go directly to the job site and any employee meetings are held right at the job sites. Mr. Mielko stated he was amending the application to request a reduction in parking for the office from 15 to 7 spaces.

Chairman Monopolus questioned the three warehouses.

Mr. Mielko stated that warehouse #1 and #2 will be used and he anticipated renting the third one.

Mrs. Hicks questioned if this was a year round operation and Mr. Mielko confirmed that it was.

Mr. Gullo stated he would have to recalculate the parking for the entire project.

Mr. Mielko stated the warehouse is 30' x 35" and the office is 50' x 35'.

Mrs. Hicks commented that she was happy Mr. Mielko wanted to bring his business to West Seneca, but she was not happy about the number of variances he was requesting.

2012-002 (continued)

Mr. Mielko thought that any business that located on this parcel would have a problem with the ingress/egress and will need some kind of variance for the driveway.

Chairman Monopolus questioned if Mr. Mielko had talked to the adjoining neighbor about the proposed project.

Mr. Mielko responded that he had not told the neighbor of his plans. He at one time had discussions with the neighbor about purchasing his property, but they were not able to agree on a price.

Mr. Hughes wanted to hear the neighbor's thoughts on Mr. Mielko's proposal.

Mr. Martin stated it would also be helpful to see better drawings of the proposed project. In addition, he should talk to the neighbor and get something in writing from him.

Mr. Harmon stated they also needed to know how many parking spaces are required for the entire site and how many Mr. Mielko was asking to be eliminated.

Mr. Gullo agreed that they needed more information from Mr. Mielko on the project he was proposing. He needs to know if the warehouse will be strictly a warehouse, if it will be cold storage, if there will be an office in it, etc. He further noted that if this project proceeds to the Planning Board, a SEQR review will be required.

Mrs. Hicks stated she was not in favor of a stone driveway.

Mr. Mielko responded that this would be a problem because if the project does not meet his budget it will not happen. He further commented on the taxes on a vacant parcel as opposed to it being developed.

Mr. Martin questioned if it would help if the Zoning Board gave Mr. Mielko a year to put the blacktop in, blacktop the first 100' from the road, or put the binder in.

Mr. Mielko stated that would help but noted that the stone was proposed for the driveway entrance only. The back portion will be paved.

Chairman Monopolus stated there will still be a problem with dirt and mud on Clinton Street because vehicles will be going from the paved surface to the unpaved surface.

Mrs. Hicks stated she was still concerned with the stormwater management plan and the runoff into the feeder stream.

Mr. Martin stated that the Town Engineer will have to be satisfied with these things before any development can begin.

2012-002 (continued)

Mr. Harmon suggested that Mr. Mielko meet with Mr. Gullo to review what he is required to provide for the next Zoning Board meeting.

Motion by Monopolus, seconded by Hughes, to table this item until the February meeting and request that Mr. Mielko contact his neighbor concerning the proposed project.

Ayes: All

Noes: None

Motion Carried

TABLED ITEM

2011-56

Request of Richard Schmitt for a variance for property located at 1051 Center Road to allow reduction of required bulk area and required frontage from 40' to 35'

The petitioner was still not present.

Motion by Hicks, seconded by Hughes, to remove the item from the table and receive and file it.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Harmon, seconded by Hicks, to adjourn the meeting at 7:50 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,



Jacqueline A Felser
Town Clerk/Zoning Board Secretary