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

ZONING BOARD OF APPEALS
Minutes #2016-04
April 20, 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 Evelyn Hicks and 30 seconds of silent prayer.

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

Absent - None

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

Ayes: All Noes: None Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Marzullo, seconded by Hughes, 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 Marzullo, to approve Minutes #2016-03 of March 23, 2016.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2013-13

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

Brian & Lisa Hirsch stated their request to continue raising six chickens, no roosters.

2013-13 (continued)

Chairman Elling stated there were no police reports or complaints received for 122 Tampa Drive.

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a one year variance for property located at 122 Tampa Drive to raise chickens.

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 stated his proposal to move the patio at 1780 Orchard Park Road from in front of the old bar to the front corner of the building in the parking lot.

Chairman Elling referred to comments received from NYSDOT stating they had no concerns with moving the patio and permitting outdoor seating; however, "there is a paved area at the northern portion of the site along the Orchard Park Road frontage that appears to be used for parking and it should be eliminated. Also, we suggest that access is controlled and better defined to create a 24' wide driveway on Orchard Park Road, which is the NYSDOT standard width for a minor commercial driveway. Both of these concerns could be addressed by providing a combination of internal curbing and grass areas."

Mr. Hansen stated the area along Orchard Park Road was used for parking, but it no longer is. He further noted the Highway Department had requested to use the area as a turn around.

Town Attorney John Fenz advised the Zoning Board does not have the ability to impress site plan issues against an applicant, but they can strongly recommend that they comply with NYSDOT.

No comments were received from the public.

2016-15 (continued)

Motion by Elling, seconded by Harmon, to close the public hearing and grant a variance for property located at 1780 Orchard Park Road to move the patio with outdoor seating to the front of the building, with the recommendation that they comply with NYSDOT guidelines with regard to eliminating the paved area at the northern portion of the site along Orchard Park Road and better define the access with a 24' wide driveway.

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 stated their desire to use the outdoor patio at their business, Rusty Nickel Brewing Company. They believe the patio is shielded from public view and a variance is not necessary and they requested an interpretation by the Zoning Board. Mr. Havens noted the patio is 415' feet from the houses on Main Street and 40' down from them. He presented aerial views of the property and submitted signatures of approval from two of the four abutting neighbors.

Town Attorney John Fenz stated there is case law that determines public view and the courts have interpreted it as abutting neighboring property.

Mrs. Hicks stated she considers public view as being within normal visual range by a person on a public street or sidewalk adjacent to a property. The side part of the patio is able to be viewed from Seneca Street, and although there is a fence, the patio can still be seen.

Brian Cosgrove presented pictures of the patio from his property at 825 and 831 Main Street. Mr. Cosgrove stated he is not against a business prospering, but he has issues with the patio, noting it was open all last summer and the noise carries to his house on Main Street. The business was originally portrayed as production with retail sales to the general public. At that time, they did not believe the neighbors would be impacted as it was anticipated traffic would be less than the previous day care center and there would be no offensive smell. Mr. Cosgrove stated the business has gone significantly beyond that. It was previously stated they would close at 10 P.M., but they now want to use the patio until 1 A.M. A quiet brewery would not be a problem, but there is lively conversation that is not family friendly at times. Mr. Cosgrove further stated the music would not be an issue if it is not live music past a reasonable time.

2016-17 (continued)

Jillian Nogaro commented the noise levels increase during certain hours and carry over to her Main Street property. Her tenant above her garage can also hear voices clearly in her apartment.

Mr. Havens stated the Town Code specifies 95 decibels for commercial and residential zoning from 7 A.M. until 11 P.M. Between 11 P.M. and 7 A.M. the Town Code specifies 65 decibels. He felt they were within that level but was willing to reduce the music if needed.

Chairman Elling stated he was in receipt of letters of support from neighbors at 4340 & 4348 Seneca Street who have no objections to use of the outdoor patio. He suggested the applicants meet with the neighbors and Mr. Fenz to discuss this issue and see if they can come to some resolution.

Motion by Elling, seconded by Hicks, to table the public hearing to allow discussion with involved parties to attempt to resolve their issues.

Ayes: All Noes: None Motion Carried

NEW BUSINESS

2016-19

Request of Jeannette & Mark Sutter for a variance for property located at 42 Iris Avenue to reduce side yard setback to one foot for construction of new garage (3' setback required)

Mark & Jeannette Sutter stated their proposal to replace their existing garage with a slightly larger garage. The new structure will be 22′ wide, more than 10′ from the house and setback 1.5′ from the lot line to allow easier access. Gutters will drain across the back and away from the neighbor's property.

Chairman Elling stated he was in receipt of letters of support from neighbors at 33, 36, 41, 46 and 52 Iris Avenue and 39 Jasmine Avenue.

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a variance for property located at 42 Iris Avenue to reduce the side yard setback to 1.5′ for construction of a new garage.

Ayes: All Noes: None Motion Carried

2016-20

Request of John & Kelli Osborne for a variance for property located at 2157 Union Road to allow a 6' high fence in side yard of corner lot with more than 10' projection into front yard (maximum 4' high fence in front & side yard allowed with no more than 10' projection into front yard)

John Osborne stated his proposal to construct a 6′ stockade type privacy fence in the back yard and a 3′ fence in the front yard to protect the animals entering and exiting his dog grooming business on Union Road. Mr. Osborne presented a drawing indicating the location of the fences and gates and stated he would like the 6′ fence on the south side of the property for privacy, but will match it with the 3′ fence.

Chairman Elling referred to the fences along Union Road and stated the town is requiring something more eye appealing than chain link for an entrance to the town. He further noted the fence should be on their property and not on the right-of-way.

Mrs. Hicks suggested checking with the code enforcement office for proper location of the fence on Union Road. She further questioned the setback of the 6′ fence along Woodbine Avenue.

Mr. Osborne responded the fence will be setback 30′ from Woodbine Avenue.

Chairman Elling stated he was in receipt of letters of support from neighbors at 24, 29, 33 and 47 Woodbine Avenue and 2153 & 2181 Union Road. NYSDOT also has no objection.

No comments were received from the public.

Motion by Harmon, seconded by Elling, to close the public hearing and grant a variance for property located at 2157 Union Road as follows and as indicated on the plan submitted: 3′ high fence on the north and west of the corner lot up to the building and 6′ high fence on the south of the building along Union Road (style of fences to be determined by the Code Enforcement Office) and a 6′ high privacy fence along the south lot line and in the rear yard.

Ayes: All Noes: None Motion Carried

2016-17

Mr. Havens, Mr. Johnson, residents and Mr. Fenz returned to the meeting and Mr. Fenz advised the Zoning Board first needed to vote on whether the patio is considered to be in public view.

2016-20 (continued)

Motion by Hicks, seconded by Hughes, that the patio at Rusty Nickel is considered to be within normal visual range by a person on a public street or sidewalk adjacent to the property.

Ayes: All Noes: None Motion Carried

Mr. Fenz stated the involved parties discussed the issues involving the patio and residents requested the west of the patio be screened with deer impervious plants and trees starting at 4′ high. They further requested at 11 P.M. the music be regulated to at or near 30 decibels.

Motion by Elling, seconded by Hughes, to grant a one year variance for property located at 4350 Seneca Street to allow outdoor patio seating conditioned upon installing 4′ high deer impervious screening along the westerly portion of the patio and reducing the music to at or near 30 decibels at 11 P.M.

Ayes: All Noes: None Motion Carried

2016-21

Request of Sal Pappaceno for a variance for property located at 2271 Berg Road to allow construction of a 17' high accessory building (maximum 12' high allowed)

Sal Pappaceno stated his proposal to build a 30′ x 40′ garage to house five cars, noting the garage will be 17′ high at the peak.

Chairman Elling stated he was in receipt of letters of support from neighbors at 2265 & 2275 Berg Road and 71 Greenmeadow Drive. Erie County Division of Planning and Department of Public Works also had no recommendation or comments.

No comments were received from the public.

Motion by Elling, seconded by Marzullo, to close the public hearing and grant a variance for property located at 2271 Berg Road to allow construction of a 17′ high accessory building.

Ayes: All Noes: None Motion Carried

2016-22

Request of Thomas D Nunan for a variance for property located at 214 Tudor Blvd. to allow a 4' and 6' fence on a corner lot (fences not permitted in front yard, maximum 4' permitted in side yard)

Thomas Nunan stated his proposal to construct a 4′ fence and 6′ privacy fence on his corner lot.

Mr. Hughes noted the survey shows the fence right at the sidewalk and the Zoning Board has been requiring a 3′ setback from sidewalks for the safety of pedestrians.

Mrs. Hicks commented the area between the sidewalk and road appears larger than the average street. She suggested an 18″ setback rather than 3′.

Chairman Elling stated he was in receipt of letters of support from neighbors at 204, 205, 210, 211, 215 & 231 Tudor Blvd. and 201 & 205 Covington Drive. He questioned the lack of a signature from the property owner at 230 Tudor Blvd.

Mr. Nunan stated the owner of 230 Tudor Blvd. passed away and the house is being cleaned out.

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 214 Tudor Blvd. to allow a 4′ and 6′ fence on the corner lot setback 18″ from the sidewalk with exact dimensions from the property line to be worked out with the Code Enforcement Office, noting this is strictly due to the fact there is a larger than normal setback from the street to the sidewalk.

Ayes: All Noes: None Motion Carried

2016-23

Request of Ronnie Oakes for a variance for property located at 168 Northwood Avenue to allow a 6' fence in side yard of corner lot (maximum 4' fence in side yard allowed)

Ron Oakes stated he has a 6′ privacy fence around the pool in his back yard and would like to extend it around his house as indicated on the plan.

Chairman Elling stated he was in receipt of letters of support from neighbors at 378 & 384 Forest Drive and 176 Northwood Avenue.

2016-23 (continued)

No comments were received from the public.

Motion by Marzullo, seconded by Hughes, to close the public hearing and grant a variance for property located at 168 Northwood Avenue to allow a 6′ fence in the side yard of the corner lot.

Ayes: All Noes: None Motion Carried

2016-24

Request of Eric & Sue Deitz for a variance for property located at 108 John Alex Drive to connect pool deck to house deck (10' separation required between pool and primary structure)

Eric Dietz stated his proposal to connect a pool deck to their house deck. There is a retention pond next to the house and their property is angled, so he is trying to bring the pool closer to the house to avoid the pitch of the yard. Mr. Dietz stated there is a pool alarm and there are three steps up to the pool and a self locking, self-latching gate.

Mr. Marzullo commented on safety concerns with having direct access from a home to a pool.

Code Enforcement Officer Jeffrey Baksa stated the self-locking, self-latching gate offers the same level of safety they would require on any pool.

Mrs. Hicks also noted with the pool positioned 13′ from the house it is unlikely someone would be able to jump from the house roof into the pool.

Chairman Elling stated he was in receipt of letters of support from neighbors at 85, 93, 97, 100 & 104 John Alex Drive.

No comments were received from the public.

Motion by Hughes, seconded by Hicks, to close the public hearing and grant a variance for property located at 108 John Alex Drive to connect the pool deck to the house deck.

Ayes: All Noes: None Motion Carried

2016-25

Request of Dale Roehling for a variance for property located at 163 Kelsey Drive to expand driveway 2' from side lot line (minimum 3' from side lot line required)

Dale Roehling stated his proposal to remove a single wide driveway and install a double wide driveway setback 2′ from the property line. The existing driveway is 10′ wide and the new driveway will be 18′ wide.

Chairman Elling stated he was in receipt of letters of support from neighbors at 152, 157, 164 & 169 Kelsey Drive.

No comments were received from the public.

Motion by Elling, seconded by Marzullo, to close the public hearing and grant a variance for property located at 163 Kelsey Drive to expand the driveway 2′ from the side lot line.

Ayes: All Noes: None Motion Carried

2016-26

Request of Bogdan & Jolanta Kotnis for a variance for property located at 26 Vermont Place to construct a 20' x 25' addition on corner lot with 27' setback (30' setback required)

Bogdan & Jolanta Kotnis stated their proposal for a 20′ x 25′ addition on their house which will reduce the required 30′ setback to 27′.

Chairman Elling stated he was in receipt of letters of support from neighbors at 20, 27 & 32 Vermont Place and 4 Westwood Drive.

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 26 Vermont Place to construct a 20′ x 25′ addition on the corner lot with 27′ setback.

Ayes: All Noes: None Motion Carried

2016-27

Request of Richard Johnson of X-Press Signs Inc. for a variance for property located at 2343 Union Road to allow a 92 sf per side electronic message sign within 500' of residential property (maximum 40 sf per side allowed)

Richard Johnson stated his proposal to add a 32 sf per side electronic message sign to the existing sign at Olive Branch Restaurant to advertise menu specials. He presented signatures of approval from surrounding residents, but noted the property owner at 16 Greenfield Avenue objected to the sign and wanted to see more restrictions with regard to brightness. Mr. Johnson noted the sign will dim automatically as the sun sets.

Chairman Elling stated he was in receipt of letters of support from neighbors at 8, 10, 20, 23, 26, 27, 29, 30, 33 & 36 Greenfield Avenue and 2270 & 2278 Union Road. NYSDOT also commented they have no objection to an electronic message sign as long as the messages pertain to the business operating at this location. If the messages are for anything else, it would be considered a billboard and separate NYSDOT guildelines would apply.

No comments were received from the public.

Motion by Marzullo, seconded by Hughes, to close the public hearing and grant a variance for property located at 2343 Union Road to add a 32 sf per side electronic message sign to the existing sign for a total of 92 sf.

Ayes: All Noes: None Motion Carried

2016-28

Request of Joseph B See, R.A. for a variance for property located at 1365 Indian Church Road to reduce required bulk area from 36,000 sf to 14,091 sf, reduce required parking depth from 18' to 17' and reduce required parking spaces from 12 to 7

Architect Joseph See represented Michael Masters, owner of 1365 Indian Church Road, and stated his proposal to renovate a portion of the first floor to add two units, resulting in five units in the main building and one unit in the back building. Mr. See stated they had intended to increase the parking area, but after speaking with the Town Engineer it was determined the drainage requirements will be too costly so they are requesting a variance for the number of parking spaces and the depth.

2016-28 (continued)

Chairman Elling stated he was in receipt of letters of support from Father David Bellittiere of 14 Holy Helpers Church at 1345 Indian Church Road and surrounding residents at 2, 10 & 14 Doster Place. He further recited from a letter received from Erie County Department of Public Works stating their concerns with reducing the required number of parking spaces from 12 to 7. They note there is no parking allowed along Indian Church Road in this area and question where overflow parking will be located.

Michael Masters stated the units are one room efficiency apartments, so he felt seven spaces was sufficient. He further stated that sometimes the tenants will park in one of the driveways and use the other driveway for ingress/egress.

Mr. Marzullo did not believe seven parking spaces were sufficient for six apartments and thought that parking would be a potential problem.

Mr. See questioned the possibility of adding one unit and keeping parking at seven spaces. He asked that the item be tabled to see if Erie County would approve that plan.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to table this item pending submission of a revision to the plan and resubmission to Erie County for their review and approval.

Ayes: All Noes: None Motion Carried

2016-29

Request of Michael Anderson for a variance for property located at 1297 Seneca Creek Road to construct a garage addition reducing side yard setback to 7'9" (10' side setback required)

Michael Anderson represented property owners of 1297 Seneca Creek Road and stated their proposal to extend the garage 18' on the north side to house collectible vehicles.

Mr. Marzullo questioned if the same roof line will be followed and Mr. Anderson responded basically the same line will be followed and the addition will be 42' deep.

Chairman Elling stated he was in receipt of letters of support from neighbors at 1295, 1298 & 1299 Seneca Creek Road.

2016-29 (continued)

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a variance for property located at 1297 Seneca Creek Road to construct a garage addition reducing the side yard setback to 7'9".

Ayes: All Noes: None Motion Carried

2016-30

Request of Amber Sears of Expedite the Diehl for a variance for property located at 1055 Union Road to allow a 19' high, 130 sf ground sign (maximum 5' high, 20 sf per side allowed)

Linda Perry, office manager of Northwest Savings, stated they are looking to modernize their street sign to attract additional clients and have a better appearance in the community.

Pat Rowell of Flexlume Sign stated he is the installer for the sign and the new base will be closer to the bank than the existing sign. Only a 30" square will be illuminated.

Chairman Elling recited comments from NYSDOT that they have no objection to the proposed sign; however, it cannot be installed or extend within the state highway right-of-way or the air space above the right-of-way line. He further noted that letters of approval from the surrounding property owners are required.

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to table this item pending receipt of signatures of approval from surrounding property owners.

Ayes: All Noes: None Motion Carried

2016-31

Request of Thomas Szalay for a variance for property located at 10 Phyllis Drive to connect house deck to pool deck (10' separation required)

2016-31 (continued)

Thomas Szalay stated his proposal to install a pool and connect the pool deck to the 16′ x 12′ deck on the back of his home. He had two options for placement of the pool and would prefer to go straight off the house to avoid someone jumping off the roof into the pool. Mr. Szalay noted there will be no self-locking gate initially, but the ladder will flip up.

Chairman Elling stated he was in receipt of letters of support from neighbors at 4, 11, 18, 19 & 24 Phyllis Drive and 575 East & West Road.

No comments were received from the public.

Motion by Harmon, seconded by Hicks, to close the public hearing and grant a variance for property located at 10 Phyllis Drive to connect the house deck to the pool deck.

Ayes: All Noes: None Motion Carried

2016-32

Request of Edward Runte for a variance for property located at 79 Norwood Drive to allow 6' fence in side yard of corner lot projecting into front yard (maximum 4' fence allowed in side and front yard with proper setback)

Edward Runte stated the 4′ wooden fence enclosing his back yard is deteriorating and needs to be replaced. He would like to install a 6′ white vinyl fence in its place and keep a section of chain link fence to contain his dogs. Mr. Runte noted there are no sidewalks on Norwood Drive or South Warren Avenue.

Chairman Elling stated he was in receipt of letters of support from neighbors at 54 South Warren Avenue and 77 & 95 Norwood Drive.

No comments were received from the public.

Motion by Marzullo, seconded by Hughes, to close the public hearing and grant a variance for property located at 79 Norwood Drive to allow a 6′ fence in the side yard of the corner lot projecting into the front yard.

Ayes: All Noes: None Motion Carried

2016-33

Request of Michele Ladouceur for a variance for property located at 15 Conner Drive to allow a 6' fence in front yard of corner lot (maximum 4' fence allowed)

Gene & Michele Ladouceur stated their proposal to construct a fence across the back and up the side of their corner lot, noting they currently only have two neighbors.

Chairman Elling stated he was in receipt of letters of support from neighbors at 11 & 27 Conner Drive.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 15 Conner Drive to allow a 6' fence in the front yard of the corner lot.

Ayes: All Noes: None Motion Carried

2016-34

Request of Christopher Morlock for a variance for property located at 225 Leydecker Road to construct a 15' high garage (maximum 12' high accessory structure allowed)

Christopher Morlock stated his proposal to build a 15' high garage, noting the sidewalls will be 12', the centerline will be 15' and the peak will be 18'. His house does not have a basement, so the garage will be used mainly for storage, including a camper.

Mr. Marzullo commented on use of the neighbor's driveway.

Mr. Morlock responded the neighbor is a family member and there is an easement to access the driveway. He does plan to start using his own driveway and upgrade it in the future.

Code Enforcement Officer Jeffrey Baksa advised that a stone driveway is allowed but the town requires a non-dust producing surface.

Chairman Elling stated he was in receipt of letters of support from neighbors at 201, 210, 215 & 235 Leydecker Road. Erie County Division of Planning and Erie County Department of Public Works also had no recommendation or comments.

No comments were received from the public.

2016-34 (continued)

Motion by Elling, seconded by Hicks, to close the public hearing and grant a variance for property located at 225 Leydecker Road to construct a 15' high garage.

Ayes: All Noes: None Motion Carried

ADJOURNMENT

Motion by Harmon, seconded by Hicks, to adjourn the meeting at 9:00 P.M.

Ayes: All Noes: None Motion Carried

Respectfully submitted,

Jacqueline A Felser
Town Clerk/Zoning Board Secretary