

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

ZONING BOARD OF APPEALS
Minutes #2016-05
June 22, 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 Richard Marzullo 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.

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 Harmon, seconded by Marzullo, 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 #2016-05 of May 25, 2016.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2013-19

Request of David Shearer for renewal of the variance for property located at 1800 Union Road to allow live music

2013-19 (continued)

David Shearer stated his request for renewal of the variance for 1800 Union Road for live music inside only. There have been no changes to the establishment and the live music is only on Friday & Saturday nights until 2 A.M.

Chairman Elling noted there were no police reports filed for this establishment.

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 1800 Union Road to allow live music on Friday and Saturday nights until 2 A.M.

Ayes: All

Noes: None

Motion Carried

2016-37

Request of Steven Duckworth for a variance for property located at 81 Collins Avenue to construct a 6' high fence in the front and side yard of the corner lot (maximum 4' high fence permitted)

Steven Duckworth stated his request for a variance to allow a 6' high fence in the front and side yard of his corner lot at 81 Collins Avenue, noting he will be using the same line as the fence on Barnsdale Avenue going down Arcade Street.

Chairman Elling stated he was in receipt of the requested letters of approval from property owners at 92 & 96 Collins Avenue.

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 81 Collins Avenue to construct a 6' fence in the front and side yard of the corner lot.

Ayes: All

Noes: None

Motion Carried

2016-40

Request of Sean Hopkins, Esq. representing Ebenezer Community Landings LLC property located at 4592 Seneca Street for the proposed residential project consisting of 31 detached patio homes and 28 attached residential units

2016-40 (continued)

Attorney Sean Hopkins represented Ebenezer Community Landings LLC and stated their proposal for a 59 unit residential project on the 11.53 acre parcel at 4592 Seneca Street that is zoned R-50. He distributed revised plans for the project and a comparison of the proposed project to previously proposed projects. The developer met with the neighbors to the north, and as a result, considerable green space was added to the north side of the project including 100' of green space that will be preserved in perpetuity. The developer also agreed to try to assist with solving existing drainage problems the neighbors have been dealing with. Mr. Hopkins noted that lot lines for the patio homes will not exist and are shown on the plan for illustrative purposes only. Purchasers will receive a deed with a legal description only for the footprint of their unit. The target market is empty nesters, seniors, affluent professionals and snowbirds. Yards and detention ponds will be owned and maintained by an association and there will be private trash pickup. Mr. Hopkins stated they prefer not to attach the patio homes, but if they did no variances would be needed except for two.

Code Enforcement Officer Jeffrey Baksa recited the variances needed for the project as follows: Patio homes #15 – #45 on the north side need 8000 sf of bulk area (#27 - #30 have the bulk area; the remaining homes need a variance for reduction in bulk area); all the patio homes and two-family homes need a variance for the front setback (30' required); #25 – #27 need a variance for the rear setback (30' required); the two-family homes require a parking variance to allow parking in the front setback. Mr. Baksa stated no variance is required for the side yard setbacks.

Mr. Marzullo questioned the front setback and was concerned with the parking situation. He did not believe there was adequate parking per household and also questioned if there is a common area for the residents.

Mr. Baksa stated the front setback is 9' and with the right-of-way there will be 30' from the road.

Mr. Hopkins stated they thought the parking was sufficient, but they could move the garages on the two-family homes back so the rear of the garage is in line with the rear of the house to allow for more room in the driveway. They had also discussed with the Planning Board the possibility of allowing parking on the street and this is a private road so the town will not be plowing it in the winter. Mr. Hopkins further stated all the area not part of the units will be common open space owned by the association.

Mrs. Hicks commented on the ditch that runs across the property and questioned the size of the conservation area.

2016-40 (continued)

Mr. Hopkins responded a permit is needed from the Army Corps of Engineers to cross the ditch. There will be 190' from the closest patio home to the neighbors on Muriel Drive and the northern 100' will be deed restricted.

The developer, Kevin Curry, stated he will present a landscape plan during site plan and is willing to work with the neighbors on plantings.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to table the public hearing to allow the board members time to review the variances requested.

Ayes: All

Noes: None

Motion Carried

2016-42

Request of Christopher Ford for a variance for property located at 165 East Avenue to construct a 4' high fence projecting 15' from house to 1' from lot line (zero projection permitted)

Christopher Ford presented a survey of his property indicating the existing fence and stated his request to construct a 4' high fence that connects to it.

Town Attorney John Fenz stated a neighbor submitted an order from Judge Marshall dated 2013 and Mr. Ford's request could come in conflict with that. It should be in accordance with the variance granted June 26, 2013 which was for a 6' fence.

Mr. Ford stated he had no problem installing a 6' fence instead of a 4' fence. He further stated he had an issue with one of the neighbors and when he approached another neighbor for their signature they did not want to get involved.

Chairman Elling suggested Mr. Ford make another attempt to obtain signatures from the neighbors approving of a 6' fence or ask them to sign a letter stating they do not want to get involved.

Dennis Domzalski stated he had no problem with a 4' or 6' fence as long as it is 15' from the house.

Motion by Hughes, seconded by Harmon, to table the public hearing pending receipt of letters of approval from surrounding property owners.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2016-46

Request of Rachel Falise for a variance for property located at 36 Manhasset Street to construct a 6' high fence in the front yard (maximum 4' high fence allowed)

Richard & Rachel Falise stated their request to allow a 6' high fence in their front yard, noting the fence was already constructed because of safety concerns for their child and it is 1 3/8" farther from the sidewalk than other fences on the street.

Chairman Elling stated in recent years the Zoning Board has been requiring fences to be constructed 3' from the sidewalk so that pedestrians have an out. He further stated he was in receipt of letters of approval from property owners at 30 and 54 Manhasset Street; 5, 11 and 15 Dorr Street; and 207 Indian Church Road.

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 36 Manhasset Street to construct a 6' high fence in the front yard and setback 3' from the sidewalk.

Ayes: All

Noes: None

Motion Carried

2016-56

Request of Michele & Leonard Damico for a variance for property located at 70 Iris Avenue to raise two chickens

Michele Damico stated her request to raise chickens and presented a drawing of the proposed chicken coop, noting they will be fenced and not roam the yard and food will be stored properly. Mrs. Damico asked to amend her request to three chickens.

Chairman Elling stated he was in receipt of letters of approval from property owners at 61, 66 & 74 Iris Avenue and 63 Jasmine Avenue.

No comments were received from the public.

Motion by Harmon, seconded by Elling, to close the public hearing and grant a one year variance for property located at 70 Iris Avenue to raise three chickens, no roosters.

Ayes: All

Noes: None

Motion Carried

2016-47

Request of Erik Giermek for a variance for property located at 114 Onondaga Avenue to expand the driveway in the front yard setback and construct a carport with no side setback (30' front setback and 5' side setback required)

Erik Giermek presented pictures of his proposal to expand his driveway and construct a carport abutting the side lot line to allow covered access to a vehicle. The carport will be constructed of wood, attached to the house, sided and roofed.

Chairman Elling stated he was in receipt of letters of approval from property owners at 102, 106, 110, 118 and 122 Onondaga Avenue.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to close the public hearing and grant a variance for property located at 114 Onondaga Avenue to expand the driveway in the front yard setback and construct a carport with no side setback.

Ayes: All

Noes: None

Motion Carried

2016-48

Request of Thane & Michele Hoffmann for a variance for property located at 414 Angle Road to construct a garage with 22' front setback (minimum 30' front setback required)

Thane & Michele Hoffmann stated their proposal to construct a garage and presented a sketch of the building that will be placed at a 90 degree angle to the house. The garage will have the same siding as the house and use the same driveway.

Mr. Marzullo questioned if any utilities will be installed in the garage and Mr. Hoffmann responded there will be no water or gas, but he might install electric in the future.

Chairman Elling stated he was in receipt of letters of approval from property owners at 1045 and 1069 East & West Road; 358, 377 and 385 Angle Road; and 5 Taylor Drive, but the letter does not state that the setback will be 22'. He also questioned lack of a signature from the property owner at 1 Taylor Drive.

2016-48 (continued)

Mr. Hoffmann responded that the property owner at 1 Taylor Drive never got back to him.

Chairman Elling was not comfortable with the wording of the letter signed by the residents and asked that it be recirculated. Code Enforcement Officer Jeffrey Baksa will provide the correct neighbor letter for Mr. Hoffmann to circulate.

No comments were received from the public.

Motion by Elling, seconded by Hicks, to table the public hearing pending receipt of a letter indicating the 22' setback for the garage and signed by surrounding property owners.

Ayes: All

Noes: None

Motion Carried

2016-49

Request of Gerald & Rosemary Rusin for a variance for property located at 237 & 247 French Road to reduce required 100' lot width to 97'

Code Enforcement Officer Jeffrey Baksa stated the entire parcel was sold and the seller is withdrawing the request for a variance.

Motion by Elling, seconded by Hicks, to receive and file this item with no further action required.

Ayes: All

Noes: None

Motion Carried

2016-50

Request of Richard Keenen for a variance for property located at 228 Oakbrook Drive to construct a 6' high fence in front and side yard of corner lot projecting more than 10' into front yard

Richard Keenen stated his request to construct a 6' high fence in his front and side yard extending more than 10' into the front yard, noting this was approved in 2004 but he was unable to construct the fence due to personal issues.

Chairman Elling stated he was in receipt of letters of approval from property owners at 222, 233 & 234 Oakbrook Drive and 9 Tanglewood Drive.

No comments were received from the public.

2016-50 (continued)

Motion by Elling, seconded by Marzullo, to close the public hearing and grant a variance for property located at 228 Oakbrook Drive to construct a 6' high fence in the front and side yard of the corner lot projecting more than 10' into the front yard and at least 3' from the sidewalk.

Ayes: All

Noes: None

Motion Carried

2016-51

Request of Josie Loubert for a variance for property located at 34 Queens Drive to construct a 6' high fence in side yard (maximum 4' high fence allowed)

Josie Loubert stated her request to construct a 6' high fence in the side yard due to the closeness of her neighbor's driveway to her bedroom window on the south side of the house.

Chairman Elling stated he was in receipt of letters of approval from property owners at 26 & 33 Queens Drive.

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 34 Queens Drive to construct a 6' high fence in the side yard.

Ayes: All

Noes: None

Motion Carried

2016-52

Request of Gregory Showalter for a variance for property located at 54 Maplewood Avenue to allow keeping of bees in boxes on top of greenhouse roof higher than 12' (maximum 12' high accessory building allowed)

Gregory Showalter stated he has been raising bees on his property for a year and recently placed the hives on top of his greenhouse which exceeded the allowed height for an accessory structure. He presented pictures of the structure and stated he raised the hives above the ground to avoid conflict and problems with neighbors. Mr. Showalter commented on the flight path of honey bees and stated their natural environment is high. Hives are only located on the ground for the convenience of the bee keeper. The average hive has 20,000 to 50,000 bees.

2016-52 (continued)

Chairman Elling requested documentation supporting Mr. Showalter's reasoning for locating the bee hives high and questioned how often he goes up to service the bees and the safety of the ladder.

Mr. Showalter responded that depending on the season he services the bees weekly to monthly and he works as a lineman so had no concern with the ladder to access the hives.

Code Enforcement Officer Jeffrey Baksa stated there are no Town Codes that address the safety of the ladder.

Brian Budzynski and Andrew George stated they are neighbors of Mr. Showalter and have no problems or concerns with the bees.

Chairman Elling stated he was in receipt of letters of approval from property owners at 46, 50, 54, 60 & 63 Maplewood Avenue.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to table the public hearing to allow the board members time to further review the variance request.

Ayes: All

Noes: None

Motion Carried

2016-53

Request of Jennifer-Marie & Emilio Mancino for a variance for property located at 147 Hillview Terrace to construct a 6' high fence in front and side yard of corner lot (maximum 4' high fence allowed)

Jennifer-Marie Mancino stated her request to enclose her yard as indicated on the plan submitted with a 6' high solid white vinyl fence so her dog can run free. The 6' high fence is needed because he would be able to jump over a 4' high fence.

Chairman Elling stated he was in receipt of letters of approval from property owners at 3, 9, 15, 24 & 141 Hillview Terrace.

No comments were received from the public.

2016-53 (continued)

Motion by Marzullo, seconded by Harmon, to close the public hearing and grant a variance for property located at 147 Hillview Terrace to construct a 6' high fence in the front and side yard of the corner lot.

Ayes: All

Noes: None

Motion Carried

2016-54

Request of Eleanor Was for a variance for property located at 117 Sharon Drive to construct a 6' high fence in the front and side yard (maximum 4' high fence allowed)

Eleanor Was stated she had removed a tree in her yard to allow her neighbor to install drain tile and a pool and she would now like to construct a 6' high fence for privacy.

Chairman Elling stated he was in receipt of a letter of approval from the property owner at 111 Sharon Drive.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to close the public hearing and grant a variance for property located at 117 Sharon Drive to construct a 6' high fence in the front and side yard.

Ayes: All

Noes: None

Motion Carried

2016-55

Request of Herman's Supply Company for a variance for property located at 240 Westminster Road to construct a 6' high fence in front and side yards (maximum 4' high fence permitted) and reduce required parking from 37 spaces to 12 spaces

Attorney Ralph Lorigo represented Herman's Supply Company of Ontario, Canada, a building and roofing supply company. They recently purchased the 5.95 acre parcel at 240 Westminster Road that is zoned M-2 and intend to use the 37,000 sf building for wholesale and some retail sales. A 6' high chain link fence with gate and padlock will be constructed for storage of roofing shingles. The application was amended and the fencing at the corner of Westminster and Meyer Road was eliminated. This allowed for 27 parking spaces instead of 12 spaces. There are eight employees so there is a substantial parking area for contractors. The neighbors are all commercial and all approve of the project.

2016-55 (continued)

Code Enforcement Officer Jeffrey Baksa stated he walked the property with the owners and they have complied with everything asked with regard to fire safety, padlocks, etc.

Chairman Elling stated he was in receipt of letters of approval from property owners at 186 & 211 Westminster Road and 418, 420 & 425 Meyer Road.

No comments were received from the public.

Motion by Elling, seconded by Harmon, to close the public hearing and grant a variance for property located at 240 Westminster Road to construct a 6' high fence in the front and side yards as amended on the plan and reduce the required parking from 37 spaces to 27 spaces.

Ayes: All

Noes: None

Motion Carried

2016-57

Request of Robert & Cleo Smith for a variance for property located at 809 Mineral Springs Road to allow a 3' high fence in front yard

Robert & Cleo Smith stated their request for a variance to allow a 3' high white vinyl picket fence around their flower garden in the front yard to stop people from cutting through their yard from Collins Avenue to Mineral Springs Road, noting the hedges that were located there died and were removed.

Chairman Elling commented the sidewalk on Collins Avenue ends before the Smith's property. He referred to the proposed location of the fence and stated if the sidewalk were continued to the corner, the Zoning Board would require the fence to be setback 3'.

Mr. Harmon suggested installing the fence on the south side only to see if that will solve the problem.

Chairman Elling stated he was in receipt of letters of approval from property owners at 319, 323, 328 & 332 Collins Avenue.

No comments were received from the public.

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2016-57 (continued)

Motion by Harmon, seconded by Elling, to close the public hearing and grant a variance for property located at 809 Mineral Springs Road to allow a 3' high fence on the south side of the front yard and return to the Zoning Board at a future date if this does not solve the problem.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Marzullo, seconded by Hicks, to adjourn the meeting at 9:10 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Jacqueline A Felser
Town Clerk/Zoning Board Secretary