

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

**ZONING BOARD OF APPEALS**  
**Minutes #2016-08**  
**August 24, 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  
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.

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**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 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 Hughes, seconded by Marzullo, to approve Minutes #2016-07 of July 27, 2016.

Ayes: All

Noes: None

Motion Carried

**OLD BUSINESS**

**2016-40**

Request of Sean Hopkins, Esq. representing Ebenezer Community Landings LLC for area variances for property located at 4592 Seneca Street for the proposed residential project consisting of 31 detached patio homes and 14 two-family homes

**2016-40** (continued)

Attorney Sean Hopkins referred to his letter dated August 5, 2016 requesting approval of seven variances (four for the detached patio homes and three for the two-family homes) and suggesting the following conditions: 1) the 100' permanent open space shall be deed restricted and filed in the Erie County Clerk's office; 2) parking on one side of the roadway; 3) Addition of landscaping in the stormwater management area and the 100' of open space on the northernmost portion of the project with submission of a landscape plan as part of the site plan approval process; 4) submission of fully engineered plans at site plan review that comply with these conditions. Mr. Hopkins further noted they are open to discussions if the town is interested in acquiring the conservation area.

Chairman Elling suggested adding a condition that the detention pond shall be owned and maintained by the homeowner's association.

Susan Kims questioned if a permit was received from the Army Corps of Engineers (ACOE), if there will be any tax breaks applied for and if the two-family homes will be owner occupied.

Mr. Hopkins responded the project is not eligible for any tax abatements from the industrial development agency. They will need a permit from the ACOE to cross the ditch due to the presence of federal wetlands, and he also indicated a very small four one hundredths of an acre wetlands on the site that they believe to be isolated. No final determination has been made on the two-family units, but Mr. Hopkins noted they have the appearance of a one family home and it is typical for a private owner to live in one half and rent out the other.

Nora Mikes questioned if anything has been done to guarantee the project will not impact Cazenovia Creek and cause flooding issues downstream.

Mr. Hopkins responded the stormwater management system will be designed to facilitate a 100 year storm event and full engineering plans will be submitted at site plan.

Motion by Harmon, seconded by Hughes, to close the public hearing and grant the following variances for the proposed residential project at 4592 Seneca Street consisting of 31 detached patio homes and 14 two-family homes:

- 1) 9' front yard setback for detached patio homes
- 2) minimum 5021 sf lot size for detached patio homes labeled as Buildings No. 15 - 25 and 31 - 45
- 3) minimum rear yard setback of 5.55' for detached patio homes labeled as Buildings No. 25, 26 & 27

**2016-40** (continued)

- 4) minimum lot width of 47' for detached patio homes labeled as Buildings No. 28 & 29
- 5) 1.74' front yard setback for the group dwellings and multi-family buildings
- 6) minimum 11' combined side yard setback for the two-family homes
- 7) one parking space for each residential unit for the 14 two-family homes

and further, subject to the following conditions:

- 1) The northernmost 100 feet of the project site shall consist of permanently protected open space and shall be subject to a Declaration of Restrictions to be recorded at the Erie County Clerk's Office to ensure the permanent open space remains undeveloped and is protected on a permanent basis
- 2) Parking in the private right-of-way as depicted on the site plan shall be limited to one side of the roadway and signage satisfactory to the Code Enforcement Office shall be installed prohibiting parking on one side of the roadway
- 3) The stormwater management facility shall be owned and maintained by the homeowners association. Landscaping shall be provided in the vicinity of the stormwater management areas and the 100 feet of required permanent open space on the northernmost portion of the project site in a manner consistent with the site plan presented to the Zoning Board of Appeals during the public hearing held on July 27<sup>th</sup>. A landscape plan for the residential project will need to be submitted for review and approval by the town's Planning Board as part of the site plan review process
- 4) The fully engineered plans to be submitted to the Planning Board as part of the site plan review process shall comply with the conditions listed above as imposed by the Zoning Board of Appeals.

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 displayed the boxes he had placed on top of his greenhouse, noting they will change as the season changes. The height of the greenhouse without the boxes is 9'6" and with the boxes that are currently on top it is an additional 4'10<sup>1</sup>/<sub>4</sub>". The maximum height will be 14'1<sup>1</sup>/<sub>4</sub>", which is 2'1<sup>1</sup>/<sub>4</sub>" over the maximum height allowed.

**2016-52** (continued)

Mr. Hughes stated the issue is the height of the boxes and the visual for the neighbors. If the boxes were on the ground they would not be a problem.

Mr. Showalter stated the boxes were raised to maintain the flight pattern of the bees and placement on the ground will create a hardship for the neighbors.

Janice Moscicki presented a picture of the boxes taken from her kitchen window and submitted a petition signed by residents of Lowell Lane who were opposed to the variance request. They are concerned with the effect on property values and stated the boxes take away from the natural beauty of the scenery and Mr. Showalter is constantly moving them around on the greenhouse. Mrs. Moscicki further questioned the validity of the neighbors' signatures on the form submitted by Mr. Showalter at a previous meeting.

Mrs. Hicks responded it would be fraud for Mr. Showalter to present illegal signatures and Chairman Elling stated they have brought petitioners back that presented incorrect information.

Motion by Elling, seconded by Hughes, to close the public hearing and deny the variance request for property located at 54 Maplewood Avenue to allow keeping of boxes on top of the greenhouse roof higher than 12'.

On the question, Chariman Elling commented that Mr. Showalter's situation is a self created hardship.

Code Enforcement Officer Jeffrey Baksa advised that the boxes need to be removed from the roof within 30 days.

Ayes: All

Noes: None

Motion Carried

Chairman Elling stated he was in receipt of a petition signed by seven residents of Lowell Lane requesting that the town establish a law regarding raising bees within town limits.

**NEW BUSINESS**

**2016-68**

Request of Richard Dudkowski for a variance for property located at 63 Dirkson Avenue to construct a 6' high fence in side yard (maximum 4' high fence permitted)

**2016-68** (continued)

Richard Dudkowski stated he acquired the vacant lot next to his property at 63 Dirkson Avenue and would like to construct a 6' high fence in the side yard. The fence will be setback 25' from the sidewalk and he intends to landscape after it is installed.

Mr. Hughes questioned why Mr. Dudkowski needed a 6' high fence.

Mr. Dudkowski responded a 6' high fence will provide more privacy and will also match the fence on the south side of his property.

Chairman Elling stated he was in receipt of letters of approval from property owners at 61, 64, 70 & 73 Dirkson AVenue.

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 63 Dirkson Avenue to construct a 6' high fence in the side yard setback 25' from the sidewalk.

Ayes: All

Noes: None

Motion Carried

**2016-69**

Request of Erik Giermek for a variance for property located at 114 Onondaga Avenue to attach existing garage with 2.83' side setback to house (5' side setback required)

Erik Giermek stated his request to attach his existing garage to his house which will reduce the side setback to 2.83'. He obtained a variance for the carport, but was unaware of the need for a variance for the side setback. The contractor already started the project and the roof is constructed.

Code Enforcement Officer Jeffrey Baksa noted attaching the garage to the home requires compliance with the fire code and there must be a fire separation wall.

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

No comments were received from the public.

**2016-69** (continued)

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 114 Onondaga Avenue to attach existing garage to house with 2.83' side setback.

Ayes: All

Noes: None

Motion Carried

**2016-70**

Request of Thomas & Lisa Turner for a variance for property located at 10 Wetherstone Drive to allow a 6' high fence in side yard (maximum 4' high fence allowed)

Thomas & Lisa Turner stated their request to allow a 6' high fence in their side yard to contain their dogs and prevent other animals from entering the yard, noting the fence is already up and they were unaware that they needed a permit. There are other similar fences in the neighborhood, which is why they didn't think there was a problem. The fence is within one foot of being in line with the rear of their neighbor's house.

Chairman Elling stated he was in receipt of letters of approval from property owners at 3, 4, 15 & 16 Wetherstone Drive.

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 10 Wetherstone Drive to allow a 6' high fence in the side yard.

Ayes: All

Noes: None

Motion Carried

**2016-71**

Request of Daniel & Rebecca Goldie for a variance for property located at 37 Lockhart Road to construct a 54" high fence in front and side yard of corner lot (maximum 4' high fence allowed)

Daniel Goldie stated his request to construct a 54" high fence in the front and side yard of his corner lot setback 3' from the sidewalk on Chancellor Lane, noting he recently installed a pool and wants to enclose the area around it.

Chairman Elling stated he was in receipt of letters of approval from property owners at 33 & 46 Lockhart Road, 15 Chancellor Lane and 6 Chambers Road.

**2016-71** (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 37 Lockhart Road to construct a 54" high fence in the front and side yard of the corner lot setback 3' off the sidewalk on Chancellor Lane.

Ayes: All

Noes: None

Motion Carried

**2016-72**

Request of Obad Alkholaki for a variance for property located at 2111 Clinton Street to allow an electronic message board within 500' of residential zoning

Joseph Jarnow of Custom Sign Company represented Obad Alkholaki and stated his proposal for an electronic message board at 2111 Clinton Street.

Mr. Hughes stated the rendering indicates only the numbers will be LED. He questioned if only the gas price will change or if there will be a message that changes.

Mr. Jarnow responded the LED area is only 2' x 4' within a 7' x 10' sign and it could be changed to include a message.

Code Enforcement Officer Jeffrey Baksa stated any time the face of a sign is changed, by Town Code it becomes a new sign. A rendering of the sign was not presented at the time of application and another variance may be required if the square footage is more than allowed by Town Code. He asked that the exact dimensions of the proposed sign be submitted to his office.

Chairman Elling also noted they are missing signatures from residents on Nash Avenue and the Zoning Board requires approval signatures from all residents within 500' of the property in every direction.

No comments were received from the public.

Motion by Mrs. Hicks, seconded by Mr. Harmon, to table this request to ensure it is in compliance with neighbor notification and that the size of the sign is in conformance with Town Code.

Ayes: All

Noes: None

Motion Carried

**2016-73**

Request of Jordan Dzierzanowski for a variance for property located at 171 St. Jude Terrace to construct a 6' high fence in front and side yard of corner lot (maximum 4' high fence allowed)

Jordan Dzierzanowski stated his request to construct a 6' high fence in the front and side yard of his corner lot, noting he would like to enclose the entire backyard for security and privacy reasons. The fence will be setback 3' from the sidewalk on Giblin Drive and have a 45 degree angle at his driveway and the neighbor's driveway.

Chairman Elling stated he was in receipt of letters of approval from property owners at 44, 47 & 50 Giblin, 10 Organ Crescent and 179 St. Jude Terrace.

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 171 St. Jude Terrace to construct a 6' high fence in the front and side yard of the corner lot setback 3' off the sidewalk on Giblin Drive.

Ayes: All

Noes: None

Motion Carried

**2016-74**

Request of Eric Honeck of Marrano/Marc Equity for a variance to allow driveways on the opposite side of some lots in the Princeton South Subdivision

Eric Honeck of Marrano/Marc Equity stated his request for variances to allow some driveways on the opposite side of lots in the Princeton South Subdivision. The center island runs north and south and the lots are on the east & west end of the island. Due to the unique grading, they would like to put the driveways on the high side of the grading. Without the variance, they will need a retention wall on many of the driveways and it will change what they are trying to accomplish with drainage.

Code Enforcement Officer Jeffrey Baksa stated no driveways will be located next to each other or directly across from each other, so he did not see a problem.

Mr. Harmon questioned the location of the driveway for Lot No. 51.

Mr. Honeck responded the Code Enforcement Office approved locating the driveway on the right side because it is across from the retention pond, so there is no problem with someone backing out across the street.

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**2016-74** (continued)

No comments were received from the public.

Motion by Hughes, seconded by Elling, to close the public hearing and grant a variance to allow driveways on the opposite side of some lots in the Princeton South Subdivision as follows: Lot Nos. 33 – 42 will have left handed driveways; Lot Nos. 43 – 50 will have right handed driveways.

Ayes: All

Noes: None

Motion Carried

**ADJOURNMENT**

Motion by Marzullo, seconded by Harmon, to adjourn the meeting at 7:55 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Jacqueline A Felser  
Town Clerk/Zoning Board Secretary