

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

ZONING BOARD OF APPEALS
Minutes #2012-09
September 26, 2012

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairman David Monopolopolus at 7:00 P.M. followed by the Pledge of Allegiance to the Flag led by Michael Hughes and 30 seconds of silent prayer.

ROLL CALL: Present - David Monopolopolus, Chairman
Michael P. Harmon
Evelyn Hicks
Michael P. Hughes
Sandra Giese Rosenswie
Jeffrey Schieber, Code Enforcement Officer
Shawn P. Martin, Town Attorney

Absent - None

Chairman Monopolopolus 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 Hicks, seconded by Harmon, 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 Harmon, to approve Minutes #2012-08 of August 22, 2012.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2010-065

Request of Matthew J Stachowiak for review of a variance allowing live music at 2339 Union Road

2010-065 (continued)

Angelo Castricone stated he is the owner of 2339 Union Road and Matthew Stachowiak was the manager. The name of the business was recently changed and he is now running the business himself. There is live music on Thursday's until 11 P.M. and on Friday's and Saturday's until 2 AM.

Chairman Monopolus stated he checked with the Police Department and found there was one complaint about live music March 3, 2012. The Zoning Board also received a letter of complaint dated September 25, 2012 from a neighbor on Greenfield Avenue.

Mrs. Giese questioned why the business name was changed and Mr. Castricone stated he liked the name Dog Pound better than Rhinos.

Mrs. Hicks stated she was not on the Zoning Board when the variance was originally granted, but she had read the minutes and thought the time was 9 PM on Thursday's and 2 AM on Friday's and Saturday's. She further questioned how motorcycles know they are to park on Denny's side of the property.

Mr. Castricone stated there is a sign directing the motorcycles where to park.

Town Attorney Shawn Martin stated that the police have not had any other noise complaints and he recalled the times granted for the variance as 11 PM Thursday and 2 AM Friday's and Saturday's.

No comments were received from the public.

Motion by Hughes, seconded by Rosenswie, to close the public hearing and grant a one year extension of the variance for 2339 Union Road with the same conditions as before: live music allowed until 11 P.M. on weekdays, with the exception of Thanksgiving Eve, New Year's Eve, St. Patrick's Day and the 2nd Wednesday in October for applicant's anniversary party when music will be allowed until 2 AM and with live music being allowed until 2 AM on Saturday's and Sunday's, noting the applicant must adhere to the town's noise ordinance.

Ayes: All

Noes: None

Motion Carried

2012-046

Request of Lorraine Brubaker for a variance for property located at 2 George Drive to construct a 6' fence in front yard (4' fence allowed)

2012-046 (continued)

Chairman Monopolus stated that Lorraine Brubaker had withdrawn her application for a variance.

Motion by Hughes, seconded by Rosenswie to receive and file application #2012-046.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2012-048

Request of Scott Heisner for a variance for property located at 44 Knox Avenue to construct a permanent awning attached to garage 3' away from house (10' separation required)

Scott Heisner represented Teresa Ziolo, property owner of 44 Knox Avenue, and stated her request to install an aluminum awning on the front of her garage. The post will be located 7' off the garage leaving 3' to the wall of the house instead of the required 10' separation. The posts will be inset one foot from the edge of the canopy and it will have a fabric valance.

No comments were received from the public.

Motion by Monopolus, seconded by Hicks, to close the public hearing and grant a variance for property located at 44 Knox Avenue to construct a permanent awning attached to the garage 3' away from the house.

Ayes: All

Noes: None

Motion Carried

2012-049

Request of Kathleen H Hill for a variance for property located at 3886 Clinton Street to construct a detached garage 2' from property line (3' setback required)

Kathleen Hill stated the existing garage is old and she would like to replace it with a new garage that is slightly larger and will extend into the 3' setback. The footer and concrete pad will be repoured and the size of the new garage will be 20' x 20'.

No comments were received from the public.

2012-049 (continued)

Motion by Hughes, seconded by Rosenswie, to close the public hearing and grant a variance for property located at 3886 Clinton Street to construct a detached garage 2' from the property line.

Ayes: All

Noes: None

Motion Carried

2012-050

Request of Patrick J Krempholtz for a variance for property located at 28 Eastwood Drive to install egress window in basement 8" from property line (3' setback required)

Patrick Krempholtz stated he bought his home at 28 Eastwood Drive with four bedrooms, one of which is in the basement and it is not up to code with regard to egress. An escape window is needed for the bedroom and the property line is 4' off the house. The other exterior wall on the rear of the house cannot be used because the sewer line is located there. The rough opening will be 3' x 5' and there will be a cement foundation with a cinder block wall to ground level. Above ground there will be brick matching the house and capped with stone. Mr. Krempholtz also had filed for a permit for a 4' fence along that side of the house.

Code Enforcement Officer Jeffrey Schieber stated the interior finished dimensions of the window well have to be 36" x 36".

Mrs. Hicks questioned if a ladder is installed into the wall going up to ground level.

Mr. Krempholtz stated there will be a ladder installed and a plexiglass cover on the top that can be cranked out or pushed out.

Mr. Schieber noted that a ladder is required if the window well is 4' or deeper and a cover is required to keep leaves, snow, etc. from filling up the well.

Cliff Borchert represented his wife and her sister who own the house next to 28 Eastwood Drive. Mrs. Borchert found a hole being dug next to her driveway and Mr. Krempholtz had never asked her permission to be on her property. Mr. Borchert suggested the egress be put on the other exterior wall that faces the back yard.

Mr. Hughes questioned if Mr. Borchert was opposed to this due to a cosmetic issue.

2012-050 (continued)

Mr. Borchert cited an air conditioner and wiring that he felt detracted from the curb appeal and stated that the egress was built without approval of a variance. He commented that Mr. Krempholtz had other alternatives and a 4' fence will not be sufficient screening.

Mr. Harmon questioned if the basement bedroom was already there.

Mr. Krempholtz stated the bedroom was there when he bought the house. The laundry room and gas lines are located on the other side of the basement and the main sewer and vents are on the other exterior wall, so that will not work for the egress.

Mrs. Rosenswie questioned if Mr. Krempholtz would agree to putting up a 6' fence.

Mr. Krempholtz stated he would agree to a 6' fence if that will make the neighbor happy.

Mr. Borchert suggested the fence be installed from the front corner of the house to beyond the garage and asked that the good side of the fence be placed toward his wife's property.

Mr. Schieber stated that the permit is for a 4' fence with an 8' projection off the house toward Eastwood Drive, starting at the front corner of the porch and extending to the rear corner of the house. He further noted that the town does not regulate the good or bad side of the fence.

Mr. Krempholtz stated he planned to construct a pressure treated fence but he would not agree to put the good side toward the neighbor's property.

Motion by Hughes, seconded by Rosenswie, to close the public hearing and grant a variance for property located at 28 Eastwood Drive to install an egress window in the basement 8" from the property line and grant a variance for a 6' fence from the front of the porch to the back corner of the house.

Ayes: All

Noes: None

Motion Carried

2012-051

Request of Gerard T Jakubczak for a variance for property located at 865 Center Road to reduce parking to 23 spaces (66 spaces required)

2012-051 (continued)

Gerard Jakubczak, owner of Kone King located at 865 Center Road, stated they have been operating for 36 years with 29 or 30 parking spaces. They recently analyzed their business position in the community and were now proposing to install a drive-thru window which will reduce the number of parking spaces to 23. Mr. Jakubczak commented that less parking will be needed with a drive-thru and noted that his other location has a drive-thru window.

Chairman Monopolus stated that installation of a drive-thru will cause there to be only one exit, on the east side on Center Road.

Town Attorney Shawn Martin stated that if the variance is approved the project will have to go to the Planning Board for site plan approval and the parking and driveways will be addressed there. Significant issues were raised by the county that will also have to be addressed. Mr. Martin noted that this business was grandfathered in prior to adoption of the Zoning Ordinance, but this proposed change will open up certain requirements and they will have to comply with the current code. It will also be subject to approval of other agencies at Planning Board.

Mrs. Hicks stated that the letter received from Erie County takes away additional parking, so the Zoning Board would only be approving 19 spaces. She questioned if approval of this variance would obligate Mr. Jakubczak to proceed to site plan even if he chose not to go through with the project.

Mr. Martin advised that Mr. Jakubczak could decide not to go forward with the project and continue to operate his business as he has in the past. If the parking is reduced to 19 spaces Mr. Jakubczak's architect will have to revise the plan accordingly.

Mrs. Hicks questioned if 19 parking spaces was sufficient for the business and suggested they keep it at 23 spaces.

Mrs. Rosenswie agreed and suggested that the filing fee be waived if Mr. Jakubczak has to return to reduce that number.

Chairman Monopolus noted receipt of letters of approval from West Seneca Printing located across the street and neighbors at 101 Warren Avenue and 889 Center Road.

No comments were received from the public.

2012-051 (continued)

Motion by Monopolus, seconded by Rosenswie, to close the public hearing and grant a variance for 23 parking spaces and waive the fee if the petitioner needs to return for another variance to reduce that number.

Ayes: All

Noes: None

Motion Carried

2012-052

Request of John & Linda Penders for a variance for property located at 2 Ganna Court to construct an addition in the front yard reducing the setback to 22' (30' setback required)

Corey Auerbach of Damon & Morey LLP represented the petitioners, John & Linda Penders, and stated their proposal to construct an addition in their side yard. Because their house is on a corner lot, the side yard setback is 30', so a variance is required to reduce the setback to 22'.

Code Enforcement Officer Jeffrey Schieber stated his office had received information that the addition will be an apartment and the property is not zoned for a two-family dwelling. Mr. Schieber advised that if there are two separate kitchens it is considered a two-family dwelling.

Mr. Auerbach stated that the Penders' were proposing to rezone the property at one time, but they have changed their minds. The addition will have a wet bar, no kitchen, and there will only be one entrance to the property.

Mrs. Hicks noted that the plans indicate a kitchen in the addition.

Mr. Auerbach stated that the CAD program uses a kitchen in place of a wet bar and the builder assured him there will be no kitchen in the addition.

Chairman Monopolus noted receipt of a letter of support from the adjoining neighbor at 4 Ganna Court.

No comments were received from the public.

Motion by Monopolus, seconded by Rosenswie, to close the public hearing and grant a variance for property located at 2 Ganna Court to construct an addition in the front yard reducing the setback to 22'.

Ayes: All

Noes: None

Motion Carried

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ADJOURNMENT

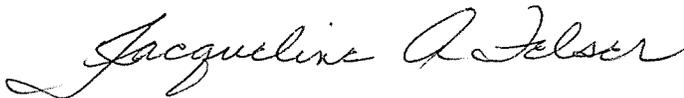
Motion by Hughes, seconded by Rosenswie, to adjourn the meeting at 8:00 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,



Jacqueline A Felser
Town Clerk/Zoning Board Secretary