



**2022-007** (continued)

Chairperson Hicks stated the NYSDOT indicated the parking in front of the establishment was an encroachment and should be removed from the NYSDOT right of way. In February, the Code Enforcement Officer stated there was a temporary solution with cones and no vehicles parked there and noted that when spring comes there will be a permanent solution. The NYSDOT requires a work permit for any work within the right of way.

Chairperson Hicks revisited the previous minutes and noted there was one police complaint and when the police had arrived there wasn't an issue. However, the next-door neighbor had concerns about the music stating it was very loud and Mr. Jemiolo is obligated to keep the noise from crossing the boundaries.

Chairperson Hicks stated Mr. Jemiolo has the right to run his business, but the neighbor has the right to enjoy his home and the situation still exists. The Zoning Board did grant a variance for live indoor music only Fridays and Saturdays between 7:00 P.M. - 10:30 P.M.; the following dates were exceptions (one per month): March 17, April 18, and May 5 from 6:00 P.M. - 10:00 P.M.; and to return the Zoning Board.

Chairperson Hicks questioned if Deputy Town Attorney Stephan Stachowski had additional input. Mr. Stachowski stated he understands the request to renew the use variance only and not the parking. Chairperson Hicks stated the parking is a condition of the permit, it was predicated on Mr. Jemiolo complying with the NYSDOT. Code Enforcement Officer Doug Busse stated the applicant is present to renew the variance for the live music, and agreed the parking is a condition of the variance, the temporary solution that was acceptable in February has expired and it is now time for a permanent barrier to be put in place.

Chairperson Hicks stated she observed a barbeque event occurring in the front of the property on April 30, 2022, noting there was a grill, a vehicle, and people outside and stated this was in violation of the variance conditions.

Mr. Stachowski questioned Mr. Busse if the parking conditions have been met at this point. Mr. Busse stated they have been met per the temporary requirements of the NYSDOT and at this point the business must permanently address the parking requirements. Mr. Stachowski confirmed that a condition for the renewal of the use variance is that the parking is corrected permanently.

Chairperson Hicks stated the applicant will need to obtain a work permit and requested the record reflect that she observed the parking violation on April 30, 2022, at approximately 6:30 P.M.

Mr. Jemiolo asked why this was in violation with people being outside and the vehicle located along the side of the building. Mr. Busse stated according the NYSDOT nothing should be in the state right-of-way other than perhaps a sign directing people to the back parking lot. Mr. Jemiolo stated he did not understand the full extent of the restrictions.

Chairperson Hicks stated another business is up against the same restrictions and they have more space; it is a safety issue. In fact, the house between the business and the neighbor was hit by a car and had to be taken down. Chairperson Hicks questioned Mr. Jemiolo's full understanding of the restriction. Mr. Jemiolo apologized for the misunderstanding and stated he will make sure the front stays clear.

Chairperson Hicks stated a letter was received from the neighbor on May 6, 2022, regarding the amount of people present in the establishment and noted eleven complaints were filed with the Police Department: March 3, 2022; March 25, 2022; March 26, 2022; April 14, 2022; April 15, 2022; April 29, 2022; April 30, 2022; May

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13, 2022; May 14, 2022 (2); and May 15, 2022. Chairperson Hicks stated of the eleven complaints there were three where the Police Department observed an issue: March 25<sup>th</sup> at 10:57 P.M. noise complaint, patrol could hear the music from inside the neighboring house. The neighbor also shared with police he believed someone was listening to a scanner to give the establishment a heads up on the complaints. On April 30<sup>th</sup> music was playing in the bar and activities were occurring on the patio and the music could be heard inside his house at 9:44 P.M. May 15<sup>th</sup> at 1:00 A.M. people were on the patio. Mr. Jemiolo stated that incident involved former employees.

Chairperson Hicks asked Mr. Jemiolo to speak to the complaints. Mr. Jemiolo stated he can put signs up and lock the door to the patio but acknowledges individuals can unlock the door. Further, business tapers off in the summer months when he does not have music. Mr. Jemiolo stated he is considering methods to deflect noise on the patio. Mr. Jemiolo attempts to control the patrons of the establishment as much as possible. Mr. Jemiolo states he is trying to be as courteous as possible to his neighbors while trying to stay in business, but it is not fair to deny him live music as it could result in him closing the business. It is an ongoing problem that has existed for years, and he is open to compromise.

Chairperson Hicks questioned Mr. Jemiolo what the plan is moving forward. Mr. Jemiolo stated he will ensure the patio door stays closed as much as possible. Chairperson Hicks asked Mr. Jemiolo what he wants from the Zoning Board. Mr. Jemiolo stated he would like to have live music.

The neighbor presented a petition signed by neighbors against the variance for live music. Chairperson Hicks read the petition which stated the reasons against the approval for live music for the Critchen: noise has a negative impact on the neighborhood, lack of parking which leads to patrons parking on Clinton Street and Inter Drive, noise of motorcycles, constant violation of restrictions imposed by the Zoning Board of Appeals. The petition was signed by 3348, 3361, 3388, and 3390 Clinton Street; 39, 20, 27, 30, and 22 Inter Drive for a total of sixteen signatures.

The neighbor stated some of the narrative on the Police Dispatch reports are different from his phone calls and he has addressed this with Chief Baker; he has recordings he can provide. Mr. Doster stated the noise is worse now that windows are open in the nice weather. It is Mr. Jemiolo's responsibility to control his establishment.

The neighbor stated the parking issue with overflow down the street is a safety issue and is indicative of overcapacity in the establishment. Chairperson Hicks stated it is an inconvenience at best and a safety hazard at worst.

The neighbor stated the business does not close on time. Chairperson Hicks stated this is noted and noted it is a continuing neighbor dispute between the neighboring residence and with whoever owns the parcel.

Mr. Hughes addressed Mr. Jemiolo and referred to the discussion in February specifically if other businesses were being faced with similar restrictions and if they were lifted in the instances where they were being good neighbors and the answer was yes to both. However, during that meeting it was noted that the applicant's track record was not good, and he has openly defied the board; Mr. Hughes would like a short time frame for a temporary variance to monitor the situation. Mr. Hughes stated it is not going well and Mr. Jemiolo's explanation about his lack of control over his business is not encouraging. Additionally, Mr. Hughes stated the business's web page indicates an upcoming event despite Mr. Jemiolo stating there are no future events. Mr. Jemiolo stated

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he will be cancelling some and parking on the street is unavoidable. Mr. Hughes stated his concern is the noise and nuisance issue and asked Mr. Jemiolo if he was tired of having to appear before the board.

Mr. Stachowski stated the applicant is before the Zoning Board for a variance for live music and questioned Mr. Busse if there have been any citations issued for Town Code violations since the February meeting. Mr. Busse stated the Code Enforcement Office was out on three occasions since the beginning of April - two Fridays and a Saturday – between 9:00 P.M. and 10:00 P.M. and had no findings on noise level violations other than the three police reports mentioned.

Ms. Greenan stated the item had been tabled contingent upon the parking issue, but it was not approved contingent upon that. Mr. Stachowski concurred and directed the board to apply the use variance test in this situation and noted the use variance has been granted in the past.

Chairperson Hicks proceed to go through the variance test: 1) can a reasonable return be achieved by another method – per the applicant live music is needed for his business to succeed.; 2) is it a unique circumstance – no, there are other taverns in town with the same situation; 3) does the variance change the essential character of the neighborhood – Chairperson Hick’s stated in her opinion the issues have disturbed the neighborhood in the past and the petition indicates other people are being impacted by the temporary variance; 4) is this a self-created hardship – yes, but the bar has existed for generations without music and many bars in town do not have live music and are thriving.

Mr. Stachowski reminded all that for use variance the applicant should pass every portion of the test, but keep in mind the precedent that exists and if something has changed, and the ruling has changed, it is best to indicate what has changed and what factor it goes to.

Chairperson Hicks stated the essential character of the neighborhood is changed during the hours, specifically the hours the music is granted. The petition specifically states the live music has had a negative impact on the neighborhood. Further Chairperson Hicks stated she is inclined to entertain a motion to deny with the applicant having the option to return and to apply for a special event permit for a particular event.

Mr. Jemiolo stated he is open to suggestions but to deny live music is going to hurt him. Chairperson Hicks questioned if Mr. Jemiolo would like to place a stay for six months. Mr. Jemiolo stated he would like to hold a few of the events he has planned and asked for suggestions to help control his establishment. Chairperson Hicks stated Mr. Jemiolo must take ownership; it is not the Zoning Board’s responsibility.

Chairperson Hicks stated music does change the essential character of the neighborhood and referred to a neighbor from across the creek that appeared at a winter meeting and stated she could hear the music from across the creek. Mr. Jemiolo asked what level and what is an acceptable level of noise; are the complaints about noise or the noise level. Chairperson Hicks stated the neighbor should not be able to hear the noise inside his house ever. Mr. Busse stated the noise ordinance indicates an acceptable decibel level from 7:00 A.M. – 11:00 P.M. and the level drastically changes from 11:00 P.M. – 7:00 A.M. The police have noise meters and none of the police reports indicate any readings were taken.

Mr. Kapuscinski asked Mr. Jemiolo and the neighbor if they ever tried to work something out. Mr. Jemiolo said he is open to this but does not think its going to be effective. Mr. Busse stated other establishments in town

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have purchased noise meters for their own use and they ask the police to record the readings when there are complaints.

The neighbor stated soundproofing the building might be an option. It is also acceptable to the neighbors to have a wind down period and special events are not a problem and perhaps moving them down to McGregor's would not bother anyone. Chairperson Hicks stated there is an apartment complex there and the neighbor cannot make that conclusion.

Mr. Hughes suggested the two parties go to the hallway to discuss the events Mr. Jemiolo has planned.

Motion by Chairperson Hicks, seconded by Greenan, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS**

**2022-016**

Request of Jordan and Anna Lawson for a variance for property located at 225 Orchard Park Road to construct a garage with 7' front yard setback and 0' side and rear yard setback (40' front yard setback required; 3' side and rear yard setback required)

Mr. Lawson stated they would like to replace the existing shed with a garage to be able to park their cars. Mr. Lawson submitted the contact with Race Storage Sheds, neighbors' signatures, and pictures. Mr. Lawson stated they were not able to obtain a signature from the new owner of 219 Orchard Park Road as they were unable to get in touch with them.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 81 and 76 Paxford Place, and 231 Orchard Park Road.

Mr. Lawson stated the issue is being on a corner lot, the garage will replace the existing shed and be approximately the same width but will be closer to the street to accommodate vehicles. Code Enforcement Officer Doug Busse stated the existing shed is over the property line by about 6" according to the survey.

Chairperson Hicks noted the NYSDOT, and Erie County Division of Environment and Planning have no objection to the variance. Chairperson Hicks requested confirmation the height is within code. Mr. Busse stated there is a 12' maximum height and Mr. Lawson confirmed they are below this.

No comments were received from the public.

Chairperson Hicks reviewed the balancing test for the area variance: 1) is there an undesirable change in the neighborhood – no because there is already a shed there; 2) is there an alternative – no, other than not doing the project or moving; 3) is the request substantial – no, despite the small lot size it is doable and there is still separation between the applicants' house and neighbors' houses; 4) does the variance have an impact on the environment – no, once it is built there is no impact.

**2022-016** (continued)

Motion by Kapuscinski, seconded by Greenan, to close the public hearing and grant a variance for property located at 225 Orchard Park Road to construct a garage with 7' front yard setback and 0' side and rear yard setback.

Ayes: All

Noes: None

Motion Carried

**2022-019**

Request of Rosina Food Products c/o Greg Setter for a variance for property located at 3100 Clinton Street to: 1) erect an LED ground sign with 50.75-sf per side; 2) within 500' to a residential property (maximum 32-sf per side; no LED signs allowed with 500' of a residential property)

Greg Setter of Rosina Food Products stated the request is to add a sign to the new facility. They would like to be able to put messages on the sign including soliciting workers, new products, and providing public service announcements for the town.

Chairperson Hicks stated the application states a use variance and asked Deputy Town Attorney Stephan Stachowski if this is an area variance. Mr. Stachowski stated it would be an area variance for a LED sign within 500' of a residential property and for a larger size sign, it would be two separate area variances in his opinion.

Chairperson Hicks noted correspondence was received from NYSDOT along with the Erie County Division of Environment and Planning indicating no objection to the variance for an LED ground sign and no proposed work is within the stated right of way.

A Clinton Street resident stated he has concerns about the size of the sign and questioned what the allowable size is. Code Enforcement Officer Doug Busse stated it is determined by each zoning district and 32-sf is permitted. The applicant has a standard sign above the LED portion and requires a size variance as well as for the distance to a residential property. Chairperson Hicks stated the sign is 11' high, but the LED portion does not exceed the 32-sf.

Mr. Setter stated the brightness will be computerized to dim and brighten depending on the time of day. Chairperson Hicks stated this is governed by the Electronic Sign Ordinance §120-40.9(f).

Chairperson Hicks stated Rosina is adding a cap to the LED portion for the company's logo and a pedestal to the bottom and does not have an issue with either option 1 or 2; but the entire size of the sign is an issue. Code Enforcement will monitor for any issues with the brightness of the sign at night. Mr. Setter stated they are working with Santoro signs and have viewed a demo in the spot they intend to place the sign.

Chairperson Hicks stated Rosina operates 24 hours, a gatehouse with red lights on the gates and a well-lit driveway and is concerned about the neighbor's enjoyment of his property.

The neighbor questioned if the top section of the sign will be illuminated. Mr. Setter stated the script will be lit up. Mr. Busse stated it is an illuminated sign which is permitted. Chairperson Hicks requested confirmation that

**2022-019** (continued)

if the variance for the size is permitted for the height, the top part of the sign itself does not require a variance. Mr. Busse confirmed this is correct.

Chairperson Hicks reviewed the balancing test for the area variance: 1) is there an undesirable change in the neighborhood – yes, but it is reasonable to have a sign for the business that is there now; 2) is there an alternative to the variance – yes, the entire sign could be made to conform to the statute and not allowed but the board does not necessarily want to do this due to the nature of the business; 3) is the request substantial – it is a matter of opinion, it is larger than what would normally be allowed, but the LED portion is within the regulations. Mr. Stachowski asked how many feet the nearest residential property is. Mr. Setter stated the property line is within 500' but the house is approximately 650' away; 4) does the variance have an impact on the environment – yes, but it will hopefully be minimized by the applicant adhering to the 26 lumens-sf after dark, or less; 5) is it a self-created difficulty – yes.

Chairperson Hicks stated the sign is in conformance with the normal sign ordinance, the driveway is sufficiently large and well lit, and noted this is a unique circumstance as the area is, in her opinion, a mixed use area as there is residential, commercial, industrial, and semi-rural. The sign won't be out of line to a great extent with what exists.

Motion by Lang, seconded by Kapuczinski, to close the public hearing and grant a variance for property located at 3100 Clinton Street to: 1) erect an LED ground sign with 50.75-sf per side; 2) within 500' to a residential property.

Ayes: All

Noes: None

Motion Carried

**2022-020**

A request of Ebenezer Community Landings, LLC c/o Sean Hopkins, Esq. for a variance for property located at 4592 Seneca Street for construction of 31 patio homes, 5 attached villas, and all related site improvements with: 1) 6.82' front yard setback; 2) 4,680-sf lot size for buildings nos. 6 – 17 and 22 – 36; 3) 5.55' rear yard setback for building nos. 6 – 18, 22, 23, and 34 – 36; 4) 37.11' lot width for buildings 17 – 22; 5) group dwellings requesting 0.0' front yard setback; 6) group dwellings requesting 24' combined side yard setback; 7) group dwelling requesting one parking space for each residential unit; 8) group dwellings requesting 18' rear yard setback (30' front yard setback required; 8,000-sf lot size required; 30' rear yard setback required; 50' lot width required; 30' front yard setback required; 32' combined side yard setback required; 2-parking spaces required for each residential unit; 30' rear yard setback required)

William Tuyn, Executive Vice-President of Ebenezer Community Landings, LLC, appeared in place of Mr. Hopkins and stated the plan in front of the Zoning Board was previously reviewed and approved. The original plan was redesigned because the sewer is located beneath the road. The redesigned plan straightens out the curve which allowed them to move the sewer out from underneath the pavement. Another benefit was straightening the roadway allowed many of the lots to be rectangular, which is preferred by property owners. The road will be private, and setbacks are measured from the end of pavement. Mr. Tuyn referred to the balancing tests Mr. Hopkins addressed in the proposal documents.

**2022-020** (continued)

Mr. Stachowski questioned if the original plan was before the Zoning Board in 2017 and Planning Board in 2018. Mr. Tuyn stated this was correct and the Planning Board just re-approved the project last month subject to the granting of the variances. Per the town code, approvals are good for one year and a one year extension, but they experienced delays due to construction costs, the redesign, and other approvals for the project beyond the town including the NYS Attorney General for the HOA.

Chairperson Hicks stated she was in receipt of correspondence from Erie County Division of Environment and Planning stating there were no concerns.

Chairperson Hicks questioned if there are any private one family 2-story dwellings on the plan. Mr. Tuyn stated the patio homes are 1-story units; there are single family attached townhomes for sale and single family detached patio home units for sale. Chairperson Hicks questioned if the people are also buying the lot the home is on. Mr. Tuyn stated the lot is included. Chairperson Hicks asked if as a community they are paying for the upkeep of the curbs, pavement, sidewalk, and lighting. Mr. Tuyn stated the HOA takes care of this and the water line. The sewer will be publicly owned.

Chairperson Hicks referred to the buffer area on the east side. Mr. Tuyn stated that area is privately owned and landlocked; they have attempted to speak with the property owner, but she is not interested in selling it. Mr. Tuyn stated the only plans they had in mind for that property were to move the ponds there and build a trail with benches to the West Seneca Senior Center property.

Chairperson Hicks asked what plans they have for the open space to the north. Mr. Tuyn stated it is part of the lot but is restricted. Chairperson Hicks asked if the restriction means there would be no future building on it. Mr. Tuyn stated there would not and there is no access to it. In addition, the town has the added protection of the HOA having to go to the Attorney General; an amended offering plan would need to be approved by everyone in the association including any banks holding mortgages, and anyone with interest in the association.

Chairperson Hicks referred to the balancing test Mr. Hopkins prepared and stated: 1) is there an undesirable change in the neighborhood – no; 2) will the benefit be achieved by another method – no, not without the variances; 3) are the variances substantial – they are not given the fact that the granting of the variances will not result in any adverse impact, none of the requested area variances will result in residential project that is not appropriate in terms of both density and scale and noted Mr. Hopkins sites case law; 4) will the proposed variance have any adverse impact on the physical and environmental conditions – Mr. Hopkins feels that it will not; 5) is it a self-created difficulty – yes, but this is not a determining factor on its own. Mr. Hopkins's conclusion is that the benefits that would be received by the applicant outweigh the resulting detriments.

Ms. Greenan asked about historical input from neighbors. Code Enforcement Officer Doug Busse stated if there were any, he believes they were addressed at the Planning Board meeting. Ms. Greenan questioned if the neighbors were re-notified at the Planning Board level. Mr. Busse stated this was not required as the property had already been rezoned. Chairperson Hicks stated this was published and it is up to the Zoning Board to re-approve the same plan.

No comments were received from the public.



**2022-020** (continued)

Motion by Hughes, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 4592 Seneca Street for construction of 31 patio homes, 5 attached villas, and all related site improvements with: 1) 6.82' front yard setback; 2) 4,680-sf lot size for buildings nos. 6 – 17 and 22 – 36; 3) 5.55' rear yard setback for building nos. 6 – 18, 22, 23, and 34 – 36; 4) 37.11' lot width for buildings 17 – 22; 5) group dwellings requesting 0.0' front yard setback; 6) group dwellings requesting 24' combined side yard setback; 7) group dwelling requesting one parking space for each residential unit; 8) group dwellings requesting 18' rear yard setback.

Ayes: (4) Hicks

Greenan

Hughes

Kapuscinski

Noes: None

Motion Carried

Abstained: (1) Lang

**2022-021**

A request of Martin Gasiewicz for a variance for property located at 318 Union Road to construct an accessory structure with 15' midspan (maximum 12' midspan allowed)

Mr. Gasiewicz stated he would like to replace a garage that was partially destroyed in a fire and would like to have 12' walls to accommodate the two 8' vehicles he owns.

Chairperson Hicks stated the variance is for the height and asked what he will store in it. Mr. Gasiewicz stated he has two old trucks, and it is less expensive to purchase a 10' door.

Mr. Hughes questioned if the trucks are for a business. Mr. Gasiewicz stated they are not.

Chairperson Hicks stated she was in receipt of correspondence from the NYSDOT and Erie County Decision of Environment and Planning stating there are not any issues with the request.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 323, 339, 316 and 338 Union Road. Mr. Kapuscinski is the owner at 338 Union Road and stated he has no opposition to the request but will be abstaining from the vote.

No comments were received from the public.

Chairperson Hicks proceeded to the area variance balancing sheet: 1) is there an undesirable change in the neighborhood – no, it is an improvement; 2) is there an alternative – no, not to meet his objective and he is replacing old and damaged with new; 3) is the request substantial – no, the lot is deep and wide and can easily accommodate this garage with minimal or no impact to the neighbor; 4) does it have an impact on the environment – no, the height will not have a negative impact. Chairperson Hicks noted the special circumstances that the prior building was heavily damaged by fire and the neighbors are in favor of the project.

**2022-021** (continued)

Motion by Greenan, seconded by Hughes, to close the public hearing and grant a variance for property located at 318 Union Road to construct an accessory structure with 15' midspan.

Ayes: (4) Hicks  
Greenan  
Hughes  
Lang

Noes: None

Motion Carried

Abstained: (1) Kapuscinski

**2022-022**

A request of Amanda Smith for a variance for property located at 107 Tobey Hill Drive to construct an addition with 10' front yard setback (30' front yard setback required)

Mr. Smith stated he would like to add a garage and master suite over it. Currently there is a one car garage; the house is not very large and with twins they have multiples of everything.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 134, 145, and 152 Bradwood Road and 108, 102, 114, and 101 Tobey Hill Drive. Chairperson Hicks noted this is a corner lot and there are two front yard setbacks.

Chairperson Hicks stated the area variance in R-75 looking to do an addition corner lot: 1) is there an undesirable change to the neighborhood – no, the addition is in keeping with the structures that are currently in the neighborhood; 2) is there an alternative – no, not one that would meet the needs of the applicant; 3) is the request substantial – it does not affect the neighborhood negatively; 4) does it have an impact on the environment – no, it is already a developed residential neighborhood; 5) is it a self-created difficulty – yes, but that is not the determining factor.

No comments were received from the public.

Motion by Greenan, seconded by Hughes, to close the public hearing and grant a variance for property located at 107 Tobey Hill Drive to construct an addition with 10' front yard setback.

Ayes: All

Noes: None

Motion Carried

**OLD BUSINESS**

**2022-007**

Request of Robert Jemiolo for a variance for property located at 3377 Clinton Street to allow live music (live music not permitted)

