

2022-034 (continued)

Code Enforcement Officer Doug Busse stated there is no road frontage for the rear lot and this is not a buildable lot. The structure meets all other criteria with property line setbacks, coverage, and size.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 49, 62, 43, and 50 Warren Avenue.

No comments were received from the public.

Chairperson Hicks referred to the variance balancing test: 1) Can a reasonable return be achieved by another method – no; 2) Is this a unique circumstance – yes, the applicant owns the adjacent lot containing the primary residence, all setbacks are met and the lot is not buildable for a residential building; 3) Does the variance change the character of the neighborhood – no, there are only vacant lots adjacent; 4) Is this a self-created hardship – yes, but not the determining factor.

Motion by Lang, seconded by Greenan, to close the public hearing and grant a variance for property located at 55 Warren Avenue to construct a 14' x 18' accessory structure on vacant lot.

Ayes: All

Noes: None

Motion Carried

2022-035

Request of David Shearer and Andrew Carnes for a variance for property located at 1800 Union Road to: 1) erect a covered patio with 24' front setback; 2) allow outdoor seating (40' front setback required; outdoor seating not permitted)

Mr. Carnes stated the application is for a covered patio on the front of the building.

Chairperson Hicks noted the applicant built the covered patio before the variance was obtained. Code Enforcement Officer Doug Busse stated his office notified the applicant immediately that they were required to obtain a variance. Unfortunately, false information was given to the applicant and when this was brought to the applicant's attention, he immediately began rectifying the situation. The applicant is currently in front of the Planning Board and site plan approval was tabled to correct the aesthetics of the structure. The number of seats, etc. will be determined upon site plan review. There has been outdoor seating in the front and on the back for some time and everything should be made to code, and therefore there is a request for outdoor seating included.

Chairperson Hicks questioned if the patio will be enclosed. Mr. Carnes stated the columns supporting the structure will be dressed up, but no enclosure.

Mr. Busse mentioned there are no neighbor letters, the establishment is surrounded by commercial properties.

Chairperson Hicks noted a letter has been received from Mr. DeMarco who is the property owner of 1800 and 1780 Union Road stating there is a shared parking agreement for more than what is required. Correspondence was received from the Erie County Division of Environment and Planning stating they have no objection to the variance. The NYSDOT provided notice that they have no objection to the town granting a variance and based

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upon information submitted, it does not appear that any proposed work is located within the state highway right-of-way. However, if any proposed work is located within the state highway right-of-way, then a NYSDOT Highway Work Permit will be required.

Chairperson Hicks stated her main concern is protecting patrons from a wayward car along Union Road and questioned if there was a plan for a barrier. Mr. Carnes stated it was his impression that the brick columns would provide a protective barrier. Mr. Busse stated this may be true; this is something Code Enforcement oversees at plan review with the applicant.

Chairperson Hicks referred to the distance between the columns and questioned Deputy Town Attorney Stephan Stachowski if the Zoning Board had any authority over the distance. Mr. Stachowski stated the normal course of business is the site plan is approved before variances are obtained. The Planning Board would have a say in the distance and the plan should be finalized before the variances are granted. Mr. Stachowski stated it was his opinion the request be tabled pending the approval of the site plan.

Mr. Busse questioned if vehicle protection could be discussed by his department as there are many different factors in the fire code regarding vehicle protection. Mr. Stachowski stated the plan should be finalized. The Zoning Board of Appeals should not be stating column distances, etc. Mr. Busse stated the variance has nothing to do with vehicle protection and will be finalized with the Planning Board. The is just for setback and outdoor seating.

Chairperson Hicks stated it was her opinion that protection should be considered and has been the past precedence. Chairperson Hicks stated she would not be comfortable approving a variance that could jeopardize the public who are using the facilities.

Ms. Greenan stated it was her understanding that the site plan needs the variance to be approved. Mr. Stachowski stated approved site plans are often subject to variances. The site plan finalizes the variance analysis. Until the plan is finalized, you do not know what is needed.

Mr. Kapuscinski stated the bollards looked to be 10' apart. Mr. Carnes stated they are under 8' and brick will be added making a shorter distance. Mr. Busse stated this was smaller than a parking space and suitable for vehicle protection.

Mr. Stachowski stated if the plan was solidified enough, it could be approved noting if something changed the variance would also need to be changed.

Mr. Busse stated a standard bollard for vehicle protection is a maximum 4" wide. The plans show a 6" x 6" post 4' in the ground. Anything else required can be gone over with the applicant.

Ms. Greenan noted at the last Planning Board meeting the Chairperson stated when the variances were obtained, the applicant would return to the Planning Board for site plan approval. Ms. Greenan stated she would be inclined to approve the variances tonight. Mr. Busse concurred, at the last Planning Board meeting Chairperson Bekak requested the applicant return after the variances were obtained with an updated site plan.

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Mr. Busse stated a stipulation can be made stating vehicle protection must be provided under national Fire Code. Mr. Stachowski stated this could be an option.

Chairperson Hicks questioned if the size and depth of the posts would satisfy the Code Enforcement office in protecting the patrons. Mr. Busse stated this would and he would go over this with the applicant to ensure it is included in the new site plan.

No comments were received from the public.

Chairperson Hicks noted there is a setback variance request and referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - there is not; 2) Is there an alternative – the applicant feels this is necessary for the success of his operation; 3) Is the request substantial – no; 4) Does the variance have an impact on the environment – no negative impact; 5) Is this a self-created difficulty – yes, but not the determining factor.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – no; 2) Is this a unique circumstance – yes, there are no neighbors and an existing establishment; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but not the determining factor.

Chairperson Hicks noted there are no residential homes nearby, there is shared parking in the lot, safety measures are being incorporated to protect the patrons, and letters of no impact have been provided by the state and county.

Motion by Hicks, seconded by Greenan, to close the public hearing and grant a variance for property located at located at 1800 Union Road to: 1) erect a covered patio with 24' front setback; 2) allow outdoor seating.

Ayes: All

Noes: None

Motion Carried

2022-036

Request of Ellen Zawodzinski for a variance for property located at 55 Pamela Court to install a generator with 2' 6" side yard setback (5' side yard setback required)

Mrs. Zawodzinski stated her neighborhood frequently losses power and she is putting in a whole house generator; a variance is required for the placement of the generator.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 56, 50, 61, and 49 Pamela Court.

No comments were received from the public.

Chairperson Hicks noted there is a setback variance request and referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - there is not; 2) Is there an alternative – the configuration of the lot makes this placement the most practical; 3) Is the request substantial – no; 4) Does the variance have

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an impact on the environment – no negative impact; 5) Is this a self-created difficulty – no, the power frequently goes off in the neighborhood.

Motion by Kapuscinski, seconded by Greenan, to close the public hearing and grant a variance for property located at located at 55 Pamela Court to install a generator with 2' 6" side yard setback.

Ayes: All

Noes: None

Motion Carried

2022-037

Request of Scott and Donna Linneborn for a variance for property located at 59 Waltercrest Terrace to erect a covered porch with 21' front yard setback (30' front yard setback required)

Mr. Linneborn stated he is requesting a variance for an awning and a porch on the front of the house. The applicant is currently updating the front of the house and is installing a gable roof and would like to include a porch with an awning by the front door. The setback for the property is required to be 30'; the setback of the house is at 25'.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 60, 54, 53, and 67 Waltercrest Terrace.

Code Enforcement Officer Doug Busse stated the applicant is putting an addition on the front to meet the existing kickout of the house, anything further past the front of the house requires the variance.

Chairperson Hicks noted there is a setback variance request and referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - this generally improves the property and the neighborhood; 2) Is there an alternative – there is not; 3) Is the request substantial – no; 4) Does the variance have an impact on the environment – no negative impact; 5) Is this a self-created difficulty – no, there must be an exit from the house,

No comments were received from the public.

Motion by Kapuscinski, seconded by Greenan, to close the public hearing and grant a variance for property located at located at 59 Waltercrest Terrace to erect a covered porch with 21' front yard setback.

Ayes: All

Noes: None

Motion Carried

Deputy Town Attorney Stephan Stachowski referred to the previous application 2022-035 and stated for final site plan approval the variances do need to be in place. When an applicant comes before the Zoning Board of Appeals there should be a full finalized plan.

2022-040

Request of Jeff Palumbo for a variance for property located at Queens Landing Subdivision Lot No's 152.05-6-10.1, 152.05-6-14, and 152.05-6-21.1 to: 1) 32.5' lot width; 2) 4,387-sf lot bulk area; 3) 0' side yard setback (50' lot width required; 8,000-sf lot bulk area required, 5' side yard setback required)

Jeff Palumbo, attorney for the applicant, stated there are several variances need for Phases 2 and 3 of construction in the Queens Landing subdivision. The Town Board recently rezoned the property to R-50 to allow the development. This brings the remaining parcels into compliance.

Chairperson Hicks referred to the previous zoning and questioned how many additional units are being placed on the parcel. Mr. Palumbo stated R-50 zoning allows for an additional 14-units. The parcels requiring the variance are divided into sublots with 2-units on each sublot.

Chairperson Hicks questioned if the town has a code in place for townhouses. Code Enforcement Officer Doug Busse stated there is no code in place; setback and zoning regulations are the only requirement.

Chairperson Hicks expressed concerns with the amount of reduction in the bulk area along with the side setback and if the occupants would own the townhome. Mr. Palumbo stated the townhomes are for sale and are typically \$260,000 - \$300,000 each; this is like what is being developed in the Queens Landing subdivision.

Mr. Lang stated this is a new housing typology. Zoning was made for the traditional single-family home, and that drove the lot sizes and square footage requirements. This was done to prevent a tenement style housing development. The is the new modern trend to townhome style living; not having the yard and maintenance is driving the changes and zoning has not caught up.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - there is not; 2) Is there an alternative – the property was rezoned to accommodate the number of townhomes; 3) Is the request substantial – yes, this is less than half of what the code requires; 4) Does the variance have an impact on the environment – yes, but the issues will be handled by the Planning Board with site plan approval; 5) Is this a self-created difficulty – yes as this is the design the client has chosen.

Chairperson Hicks noted this type of development is typical of the new demand for this type of housing. The West Seneca town code does not provide for development without a variance.

No comments were received from the public.

Motion by Kapuscinski, seconded by Lang, to close the public hearing and grant a variance for property located at Queens Landing Subdivision Lot No's 152.05-6-10.1, 152.05-6-14, and 152.05-6-21.1 to: 1) 32.5' lot width; 2) 4,387-sf lot bulk area; 3) 0' side yard setback.

Ayes: All

Noes: None

Motion Carried

**WEST SENECA COMMUNITY CENTER
1300 Union Road
West Seneca, NY 14224**

**ZONING BOARD OF APPEALS
Minutes #2022-07
July 27, 2022**

Chairperson Hicks noted she wanted to discuss this as she attends many trainings and there are many opportunities for the town, and she would like to be transparent.

Mr. Lang referred to his time consulting with the City of Buffalo and their rezoning exercises; updating the zoning code was extremely beneficial and opened many development opportunities to the city. Mr. Lang stated not everything needs to be amended. A lot of West Seneca is still a traditional mid-century community. Now you are seeing pockets of commercial and industrial development being led by stakeholders that zoning needs to support; it makes West Seneca open for business.

Chairperson Hicks stated she felt this was a good discussion done in a public forum.

ADJOURNMENT

Motion by Greenan, seconded by Kapuscinski, to adjourn the meeting at 7:23 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary