

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairperson Evelyn Hicks at 6:00 P.M. followed by the Pledge of Allegiance.

ROLL CALL: Present - Evelyn Hicks, Chairperson
Amelia Greenan
Raymond Kapuscinski
Paul Lang
Douglas Busse, Code Enforcement Officer
Stephan Stachowski, Deputy Town Attorney

Absent - Michael Hughes

OPENING OF PUBLIC HEARING

Motion by Kapuscinski, seconded by Greenan, to open the public hearing.

Ayes: All Noes: None Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Greenan, seconded by Lang, that proofs of publication and posting of legal notice be received and filed.

Ayes: All Noes: None Motion Carried

APPROVAL OF MINUTES

Motion by Kapuscinski, seconded by Lang, to approve Minutes #2022-08 of August 23, 2022.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2022-038

Request of Shirley Burgos for a variance for property located at 475 Potters Road to install an 18' x 20' turn around driveway in front yard setback (40' front yard setback required)

The applicant was not present.

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

Ayes: All Noes: None Motion Carried

NEW BUSINESS

2022-043

Request of Patrick O'Hara for a variance for property located at 38 Lenox Street to erect a 6' fence in side yard (maximum 4' height allowed in side yard)

Mr. O'Hara stated he is requesting a 6' fence to contain his dog; this is about 60' of fencing up to the front of the property line with 4' along the front.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 24 Lenox Street.

Code Enforcement officer Doug Busse stated there have been no concerns or complaints received by the Code Enforcement Office regarding the application.

No comments were received from the public.

Chairperson Hicks stated 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.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, there is currently a fence and this will match; 2) Is there an alternative – the fence is needed to contain the applicants dog; 3) Is the request substantial – this is not substantial; 4) Does the variance have an impact on the environment – there is no impact on the environment; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

Motion by Kapuscinski, seconded by Greenan, to close the public hearing and grant a variance for property located at 38 Lenox Street to erect a 6' fence in side yard.

Ayes: All

Noes: None

Motion Carried

2022-044

Request of Carlos A Guerra for a variance for property located at 615 Harlem Road to construct a garage with 14' midspan (12' maximum midspan allowed)

Mr. Guerra stated he would like to place a pole barn on his extra lot; there is no living space currently on the lot and no structures is being taken down. The extra height is needed for storage and there will be no driveway. Access will be from walking into the structure.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 82 Gordon Avenue, 182 and 190 Dwyer Street.

Code Enforcement Officer Doug Busse stated the pole barn would be allowed at the lower height; the variance is for the additional 2' in height; the location is allowed by town code.

2022-044 (continued)

Chairperson Hicks stated 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.

Mr. Kapuscinski questioned if utilities will be installed. Mr. Guerra stated that the only utility will be electric.

No comments were received from the public.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no; 2) Is there an alternative – a 12' height would not meet the applicants needs; 3) Is the request substantial – no this fits into the zoning criteria; 4) Does the variance have an impact on the environment – there is no impact on the environment; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

Motion by Greenan, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 615 Harlem Road to construct a garage with 14' midspan.

Ayes: All

Noes: None

Motion Carried

2022-045

Request of Daryl Martin Architect, PC for three variances for property located at 711 Harlem Road to: 1) 18,276-sf lot requested (28,000-sf required); 2) 17.84' rear setback requested (30' rear setback required); 3) 8.33' parking setback requested (10' parking setback required)

Chairperson Hicks noted the zoning was recently changed by the Town Board through the special use permit process and is now zoned a C-1(s).

Mr. Martin stated he has been contracted by a potential buyer for the property. After looking at the property and analyzing the costs the plan is to build something like the Crystal Creek project on Leydecker Road. The units will be similar with more of a townhouse style consisting of two bedrooms upstairs. After working with the Planning Board, it was decided to propose 5-units.

Chairperson Hicks referred to the lot size (18,276-sf) and questioned for no variances to be required, how many units would the applicant be allowed to place on the parcel. Code Enforcement Officer Doug Busse stated there would be 3-units allowed; 8,000-sf for the first unit and 5,000-sf for every additional unit per town zoning regulations.

Chairperson Hicks questioned where the applicant stood with the Planning Board. Mr. Martin stated dependent on the Zoning Board of Appeals decision, he would return to the Planning Board for site plan approval.

Chairperson Hicks questioned if neighbor signatures were obtained. Mr. Martin stated he did not have the required neighbor signatures.

2022-045 (continued)

Chairperson Hicks stated correspondence was received from the Erie County Division of Environment and Planning stating they have no objection to the variance. The NYSDOT provided the following comments: 1) 30' is the maximum allowable driveway width; 2) We desire that the driveway be moved as far away from Gordon Avenue as possible; 3) We suggest for the development plan be flipped so the driveway is on the north side of the site; 4) When we get to final site plans, we need the plan to show highway features on the opposite side of the road.

Chairperson Hicks questioned if there will be an impact to the project due to the NYSDOT commentary. Mr. Busse stated this would alter approval with the Planning Board. This could also trigger another variance as the southside is zoned R-60A and requires different setbacks. To push the building to the southside of the property would require another variance.

Ms. Greenan questioned if this would be an additional variance. Mr. Busse stated this would be in addition to the three variances being sought tonight.

Mr. Lang questioned what the setback would be from the side yard. Mr. Busse stated he believed it to be 30'.

Deputy Town Attorney Stephan Stachowski stated tonight is for the three variances for the project as it stands. Any NYSDOT comments would be sorted out before the Planning Board.

Chairperson Hicks noted she was in receipt of the following comments from Daniel Warren:

At the September 12, 2022, meeting of the West Seneca Town Board a Special Permit was purportedly granted for this project.

However, the Town Board failed to undertake and/or failed to make a determination under SEQRA as evidenced by the meeting minutes. Further. Based on the response to a FOIL request it does not appear that the Town Board complied with GML § 239-m and therefore the Town Board lacked jurisdiction to grant a special permit.

Since this Special Use Permit was not a conceptual application but is requested and reviewed for a specific purpose: for construction of a multi-family residential development. In determining whether the rezoning of the Property would have a significant adverse impact on the environment, the Town Board is "duty bound to 'consider reasonably related effects including other simultaneous or subsequent actions which are: (1) included in any long-range plan of which the action under consideration is a part; (2) likely to be undertaken as a result thereof; or (3) dependent thereon'" (Matter of Sabad v. Houle, 283 A.D.2d 851, 852, 725 N.Y.S.2d 135 quoting Matter of Village of Westbury v. Department of Transp. of State, 75 N.Y.2d 62, 68, 550 N.Y.S.2d 604, 549 N.E.2d 1175; see also Matter of Kirk-Astor Drive Neighborhood Assn. v. Town Bd. of Town of Pittsford, 106 A.D.2d at 869).

Given this will require at least two other involved agencies Erie County Department of Environment and Planning, the Planning Board and the Town Board will probably need to readdress its issuance of the Special Use Permit, I believe a coordinated review under SEQRA is required.

It is my position that since passage of the Environmental Rights Amendment to the New York Constitution (Art. 1 § 19) the requirements of compliance with the procedural and substantive requirements of SEQRA and GML 239-m referral should be strictly adhered to, and the issues require more elaboration on study on your part.

2022-045 (continued)

Mr. Stachowski stated that Mr. Warren is stating the proper procedure was not followed. It is his opinion that SEQR is granted by the Planning Board and may still be done and will be done before final site plan approval. The Zoning Board of Appeals purpose is to review and assess the variance requests. There is still more to be done with the project on the procedural side. The Zoning Board can move forward tonight with the variance requests; some of the objections will be figured out with the Town Attorney, Town Board and at the Planning Board level.

Ms. Greenan noted the balancing test questions if there is an undesirable effect on the neighborhood and noted the neighbor signatures have not been provided. Although not necessary, signatures are typically looked at.

Ms. Greenan noted the balancing test also questions if the project is substantial and stated the first variance request on the sf lot size is a substantial request. However, it should be taken into consideration that this is in a very dense area of Harlem Road and in her opinion does not change the character of the neighborhood; this will match the neighborhood as there are 8-unit apartment buildings along Harlem Road.

Mr. Kapuscinski stated in 2017 there was a variance granted for 4-units. Mr. Martin stated he is not aware of what transpired in 2017; he is working with another person. Mr. Martin stated 4-units would not work for him with the costs and the payback. The rent on 4-units would be out of the market for the neighborhood.

Chairperson Hicks noted nothing would prohibit a member of the Zoning Board from sending correspondence to the Planning Board with pertinent questions; they would be acting as a resident.

Chairperson Hicks stated this is a unique circumstance. On the east side of Harlem Road there are approximately six, 8-unit buildings. This vacant lot is in the middle of a section of developed apartments. Across the street is single family homes and a mixed-use area with schools, a bar, and a church. The zoning in the area is inconsistent; to the south is residentially zoned and the north is zoned commercial, yet the same use exists. Reducing the bulk area is a substantial request.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, the buildings are consistent with the current use on this section and side of Harlem Road and noted the Zoning Board does not know if any neighbors would object; 2) Is there an alternative – yes, a smaller footprint could be used with less units; 3) Is the request substantial – yes; 4) Does the variance have an impact on the environment – possibly, but this would be determined by the Planning Board; 5) Is this a self-created difficulty – yes, but this is not the determining factor and noted the project is not sustainable on a smaller scale.

Chairperson Hicks stated she would prefer to table the item to allow the applicant to obtain neighbor signatures from residents to the rear of the project and across the street from the project. Whatever is taken to the neighbors needs to be for exactly what is being done.

Motion by Kapuscinski, seconded by Hicks, to table the request until the October meeting to allow the applicant time to obtain neighbor signatures.

Ayes: All

Noes: None

Motion Carried

2022-046

Request of Melissa Fazio for a variance for property located at 165 Willowdale Drive to allow raising chickens on property (raising of poultry/farm animals not permitted)

Ms. Fazio stated she is looking to raise chickens for family use. There will be a chicken coop on the property; the chickens will be enclosed in their run.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 94 Creekward Drive and 161 Willowdale Drive.

Code Enforcement Officer Doug Busse stated there was a conversation between himself and the applicant regarding what is expected as far as cleanliness and maintenance of the chickens and their area.

Mr. Kapuscinski questioned if there will be any roosters. Ms. Fazio stated there will be no roosters, only hens.

Chairperson Hicks questioned how many hens would be raised. Ms. Fazio stated she is looking for four hens.

Chairperson Hicks stated if this variance is granted, Ms. Fazio will be required to return in January for renewal as this is when all chickens are renewed. This is an annual, yearly renewal.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – The chickens are being raised to feed the family; 2) Is this a unique circumstance – yes, as this is not legally allowed; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but not the determining factor.

No comments were received from the public.

Motion by Greenan, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 165 Willowdale Drive to allow raising chickens on property noting, the applicant will renew the variance in January 2023.

Ayes: All

Noes: None

Motion Carried

2022-047

Request of Amanda Lanyzs for a variance for property located at 88 Lyndale Court to allow raising chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

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

Ayes: All

Noes: None

Motion Carried

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

ZONING BOARD OF APPEALS
Minutes #2022-09
September 28, 2022

2022-048

Request of Gary Crewson c/o Masonic Lodge for a variance for property located at 647 Main Street to install a new driveway with covered roof/entrance with 29.5' front yard setback (40' front yard setback required)

Mr. Crewson stated the Masonic Lodge would like to remove the old entryway and install a portico with a revised driveway to allow guests to be dropped off and enter the building.

Chairperson Hicks stated there is an ongoing conversation between the applicant and the West Seneca Central School District regarding the property line; this has no bearing on the variance. Mr. Crewson stated he would like to obtain approximately 40' – 50' of property going towards the school to allow a gradual curve on the driveway; without the land it is just a tighter turn.

Code Enforcement Officer Doug Busse stated the current property line goes through the building and this should fix the problem.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 919 Mill Road, 643, 639, 666, and 665 Main Street. Mr. Busse stated there is only one residential house in the area.

Chairperson Hicks noted the Town of West Seneca Highway Department has requested that concrete work leave 18' – 24' from the road edge for the town to backfill with blacktop; if blacktop will be done the applicant can go to the road edge. Mr. Crewson stated the plan is for blacktop.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, this is a positive and safer change; 2) Is there an alternative – yes; 3) Is the request substantial – no; 4) Does the variance have an impact on the environment – no; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

Ms. Greenan noted this is a positive and safe addition to the building.

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 647 Main Street to install a new driveway with covered roof/entrance with 29.5' front yard setback.

Ayes: All

Noes: None

Motion Carried

TABLED BUSINESS

2022-038

Request of Shirley Burgos for a variance for property located at 475 Potters Road to install an 18' x 20' turn around driveway in front yard setback (40' front yard setback required)

Ms. Burgos stated there is a childcare business running out of the property and is looking for a turn around driveway for safety.

2022-038 (continued)

Chairperson Hicks questioned the setback being requested. Code Enforcement officer Doug Busse stated 40' is required and the request is for an 18' x 20' pad for turnaround. This is only for turning around and was discussed previously with the applicant; no vehicles can be parked. The driveway was widened where permitted for parking. This is for construction of the pad within the setback.

Chairperson Hicks questioned if the request is for solid concrete from the front of the property to the street. Ms. Burgos stated this would not be all the way to the street; there is also a sidewalk. Mr. Busse stated it was listed that the distance between the sidewalk and the proposed pad was to be determined by the Zoning Board of Appeals.

Chairperson Hicks stated it was difficult to make out the project on the renderings. Ms. Burgos stated there is not a large area but will comply with the Zoning Boards decision and what is in the best interest of safety.

Chairperson Hicks stated 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; however, if any proposed work in in the NYS Highway right-of-way a NYSDOT work permit will be required.

Chairperson Hicks questioned if this would turn into the current driveway. Ms. Burgos stated the driveway was only a single lane driveway and was widened. It is still difficult to reverse; the plan is to turn around on the pad and pull out.

Deputy Town Attorney questioned if this was a flag shape to be wider in one spot. Mr. Busse stated this was correct. There is not a second driveway exit onto Potters Road; this is a new pad in the front yard setback.

Mr. Busse noted there is a natural ditch that runs through the middle of the separate lot. Many years ago, this was two parcels that were combined.

Ms. Greenan suggested there be preserved green space for safety reasons. Mr. Busse stated he agreed; there should be a required separation. The closer to the building for approval would make more safety sense. It is almost 28' from the front of the building to the property line.

Chairperson Hicks expressed concerns with cars backing into the house. Mr. Busse stated it is 28'; if the driveway were to start 5' off the front of the house this would give a separation of 3' separation at the sidewalk. A required standing parking space is 9' x 18'.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 465, 496, 486, 490, and 475 Potters Road, 24 Tampa Drive and 116 Wind Mill Road,

Chairperson Hicks stated she would like the driveway to not be as wide. Ms. Greenan concurred. Chairperson Hicks stated she would like the width to go from 20' to 15' with 5' - 8' from the building or the sidewalk. Mr. Busse suggested splitting the difference.

Mr. Lang noted Potters Road is angled and is going to grow going from the pad so you would set the minimum at the pinch point of the driveway.

2022-038 (continued)

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no; 2) Is there an alternative – no, there is a drainage ditch; 3) Is the request substantial – no; 4) Does the variance have an impact on the environment – no; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

No comments were received from the public.

Motion by Hicks, seconded by Greenan, to close the public hearing and grant a variance for property located at 475 Potters Road to install a 15' wide x 18' deep turn around concrete pad with the following conditions: 1) 6 1/2' from the building for the purpose of temporary turn around only; 2) no parking shall be in the turn around area; 3) the area is not for public use (i.e. patio); 4) a minimum of 6 1/2' of greenspace between the turnaround pad and the shallowest.

Ayes: All

Noes: None

Motion Carried

2022-047

Request of Amanda Lanyzs for a variance for property located at 88 Lyndale Court to allow raising chickens on property (raising of poultry/farm animals not permitted)

The applicant was not present.

Motion by Hicks, seconded by Kapuscinski, to table the item until the October meeting.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Hicks, seconded by Lang, to adjourn the meeting at 8:42 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary