



Chairperson Hicks stated a use variance requires a harder look by the Zoning Board and the board will be determining the metrics required. Live music has been approved in the past and some bars have no residential neighbors while others have been contentious with the neighbors.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 140, 132, and 131 and Borden Road and 4676, 4672, 4703, 4709, 4713, 4744, and 4475 Clinton Street. The following correspondence was received from David Bystrak at 4721 Clinton Street:

"I am writing to you to voice my opposition to Buffalo Creek Bar and Grill (located at 4717 Clinton St.) having a music sound system or live bands on their outside deck. Since I work 2<sup>nd</sup> shift, I am unable to attend Zoning Board of Appeals meetings without taking a day off from my job.

I live directly across the street from their outside deck on the corner of Clinton Street and Borden Road and have for 19 years. My family room and bedroom are both on the west side of my home directly facing their deck, and my property would be adversely affected by outside music or live bands.

From my experience with previous owners of the property at 4717 Clinton Street, their deck will always be busy and full of people when the weather is nice. They do not need any music sound system or live bands to attract business.

Other than road noise from the intersection of Clinton Street and Borden Road, the neighborhood is quiet and relaxed. Buffalo Creek amplifies any noise in the area and would cause a music sound system or live bands to negatively affect the quality of life in our neighborhood.

In addition, having a music sound system or live bands would reduce the property values of any homeowners in the area. People do not like living next to loud neighbors.

Because of these reasons, I am opposed to any music sound system or live bands on the outside deck of the Buffalo Creek Bar and Grill. Thank you for your time and consideration."

Deputy Town Attorney Stephen Stachowski requested clarification from the Code Enforcement Officer on what would be allowed outdoors. Code Enforcement Officer Doug Busse explained the establishment is allowed to have to have a sound system (i.e., radio) at any time if they are abiding by the town's noise ordinance. The variance request is for live music.

Chairperson Hicks questioned what remedy the neighbors have to any objections to the noise level. Mr. Busse stated any violations to the noise should be called into the West Seneca Police Department and/or the Code Enforcement Office; there must be a recording of the decibel level. Mr. Busse stated any residents who do complain should make sure the complaint is a matter of record on file with the police.

Chairperson Hicks requested clarification on a special event permit. Mr. Busse stated this is a permit to allow a special event with live music once or twice during the year and coordinated with his office.

Mr. Stachowski stated the applicant would need to show there is a financial hardship for the establishment if live music was not allowed or the financial benefit of having live music. Town code allows a sound system with no issues and in theory a live band could be the same decibel level. The testimony of a financial hardship would be considered. Mr. Shaw stated the patio could bring in a lot of money.

Chairperson Hicks stated correspondence was received from the Erie County Department of Environment and Planning with no objection to the variance request as this is of local concern; there was no comment from the NYSDOT.

Dale Klink, 4760 Clinton Street, made the following comments:

- ✓ 4744 Clinton Street is his shop; Mr. Klink did not sign with no objection; his son was the signer.
- ✓ Nickle Creek Café had music two – three times a night; overflow parking was in his lot and Kloc's Funeral Home.
- ✓ The lot is not big enough to handle the cars.
- ✓ The backyard allows the music to be amplified.
- ✓ The owner originally said the music would be on Sunday afternoon.
- ✓ Problems arose in 2005 with previous owners and music.

Mr. Busse noted the corner across from the bar is zoned commercial and the auto shop requires a special use permit and is also zoned commercial. While there are residential homes, 75% of the corner is zoned commercial. The property owned by Mr. Bystrak is the only residentially zoned parcel on the corner.

Thaddeus Sawicki, 4672 Clinton Street, made the following comments:

- ✓ His elderly mother signed with no objection; did not really know what she was signing.
- ✓ Unable to pull out of driveway during events.
- ✓ Patio was constructed for dining.
- ✓ Has not been open long enough for any knowledge of an economic impact.
- ✓ Should not be parking when there is a 3' drop to a ditch.

Ms. Greenan stated today's purpose is strictly for live music, not any type of music. Any concerns such as parking would have to be brought to the Code Enforcement Office. Mr. Busse stated occupant load is decided by the Police Department and Code Enforcement Office; parking issues or occupant load should be directed to the Police Department.

Brian Doster, 3361 Clinton Street, stated it was his belief that the town code states that outdoor live entertainment is not allowed if the property abuts the side yard of a residential property. Mr. Busse stated he is not familiar with this; it is the decibel level.

Chairperson Hicks stated the job of the Zoning Board of Appeals is to interpret the code the way they see it best suits the town and the residents. The town code is not consistent throughout. Mr. Busse stated outdoor entertainment is typically live music.

Mr. Shaw stated it is not his intent to have live bands every Friday, Saturday, and Sunday. The hope is to have bands three – four times a month. Mr. Shaw understands the concerns of the past but would like the opportunity to show he follows the rules.

Ms. Greenan stated the request is for Friday and Saturday from 7:00 PM – 10:00 PM and Sundays from either 1:00 PM – 4:00 PM or 2:00 PM – 5:00 PM; in the past times have been compromised. Chairperson Hicks stated the end time must be adhered to. Mr. Shaw stated he understood and wants the opportunity to prove himself.

Mr. Bedient questioned if there was any way to stop the acoustics on the back deck. Mr. Shaw stated he plans to turn the speakers inward towards the establishment.

Mr. Klink stated the establishment previously had a band. Mr. Shaw stated this was when they first opened, and he was unaware he needed a variance.

Mr. Lang stated indoor live music should be included in the deliberations.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, this is an attraction for the business; 2) Is this a unique circumstance – yes, this is a mixed use area; 3) Does the variance change the character of the neighborhood – the applicant does not intend to change the character of the neighborhood; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Lang, seconded by Greenan, to close the public hearing and grant temporary variance for property located at 4717 Clinton Street to allow live music with the following conditions: 1) Friday and Saturday from 7:00 PM – 10:00 PM; 2) Sunday from 1:00 – 4:00 PM; 3) this is a 60-day trial through June 25, 2023, at which time the applicant will reappear at the June 28, 2023 meeting.

Ayes: All

Noes: None

Motion Carried

**2023-006**

Request of Keith Berlinski for a variance for property located at 574 Harlem Road to construct a 35' x 75' accessory structure with a 5' side yard setback (25' side yard setback required)

Mr. Berlinski stated he is the owner of Hot Wired Electrical and would like to have a storage building to store his company equipment.

Chairperson Hicks noted the lot is 406' deep and notified the applicant of the West Seneca Tree Ordinance.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 143 Aurora Avenue and 564 Harlem Road.

No comments were received from the public.

Ms. Greenan questioned if there was any other alternative. Mr. Berlinski stated there was not and his equipment is now stored in Varysburg.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, there are neighbor letters in support; 2) Is there an alternative – yes, but the equipment is currently stored approximately 30 miles away; 3) Is the request substantial – the building is large but this is commercial property; 4) Does the variance have an impact on the environment – there is no impact on the environment; 5) Is this a self-created difficulty – no, this is where the business is located.

Chairperson Hicks stated correspondence was received from the Erie County Department of Environment and Planning along with the NYSDOT with no objection to the variance request as this is of local concern.

Motion by Bedient, seconded by Greenan, to close the public hearing and grant a variance for property located at 574 Harlem Road to construct a 35' x 75' accessory structure with a 5' side yard setback.

Ayes: All

Noes: None

Motion Carried

**2023-007**

Request of Ali Ahmed Ali for a variance for property located at 91 Garry Drive to construct a 5' x 8' covered patio in required front yard setback (covered patio not permitted in front yard setback)

Mr. Ali stated he would like a wood frame awning over his front patio with vinyl wrapping due to the sun beating on the front of the house and to protect from the elements.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 99, 94, and 107 Garry Drive.

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, there are neighbor letters in support; 2) Is there an alternative – no, the sun and rain beat on the front of the house; 3) Is the request substantial – no; 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 an improvement to the home.

Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 91 Garry Drive to construct a 5' x 8' covered patio in required front yard setback.

Ayes: All

Noes: None

Motion Carried

**2023-008**

Request of Ronald Stachowiak for a variance for property located at 51 Brookwood Drive to erect a 6' fence in side yard (maximum 4' height allowed in side yard)

Mr. Stachowiak stated he would like to fence in the side of the house to enclose the air conditioner and generator.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 45, 57, 44, and 50 Brookwood Drive.

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, there are neighbor letters in support and the fence will block the air conditioner and



**2023-011**

Request of Helen and Sherman Washington for a variance for property located at 555 Mill Road to erect a 6' fence in front and side yard (maximum 4' height allowed in front and side yard)

Mr. Washington stated he would like to place a 6' fence on each side of his home. This is a corner lot on Mill Road and Treehaven Road with the house on an angle. There are air conditioning units that can be seen and heard by neighbors and the fence would provide privacy and shield the units.

Code Enforcement Officer Doug Busse stated the fence would not impede any traffic.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 3 and 4 Treehaven Road and 561 and 545 Mill Road.

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 – yes, but the fence is requested for safety and privacy; 3) Is the request substantial – no; 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 Bedient, seconded by Greenan, to close the public hearing and grant a one year variance for property located at 555 Mill Road to erect a 6' fence in front and side yard.

Ayes: All

Noes: None

Motion Carried

**2023-012**

Request of Peter Pantano for a variance for property located at 196 Main Street to erect a 6' fence in front and side yard with a 10' projection off the house (4' maximum height allowed in front and side yard; no projection off house permitted)

Mr. Pantano stated he would like to erect a 6' fence along the side and back of the yard. The house is on the corner of Main Street and Iris Avenue.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 27 and 22 Iris Avenue and 200 and 186 Main Street

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 – yes, but the fence is requested for safety and privacy; 3) Is the request substantial – no; 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 Lang, seconded by Bedient, to close the public hearing and grant a one year variance for property located at 196 Main Street to erect a 6' fence in front and side yard with a 10' projection off the house.

Ayes: All

Noes: None

Motion Carried

**2023-013**

Request of Michael Kalenda for a variance for property located at 151 Main Street to erect a 6' fence in front/side yard (maximum 4' height allowed in front/side yard)

Mr. Kalenda stated he would like a 6' fence from the rear to the side of the property and scaling down to 4'.

Code Enforcement officer Doug Busse stated the 4' section is allowed; the variance is for the 6' fence section on the side of the house.

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 – yes, but the fence is requested for safety and privacy; 3) Is the request substantial – no; 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 Lang, to close the public hearing and grant a one year variance for property located at 151 Main Street to erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

**ADJOURNMENT**

Motion by Greenan, seconded by Bedient, to adjourn the meeting at 7:40 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler  
Town Clerk/Zoning Board Secretary