

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
Edmund Bedient
Amelia Greenan
Paul Lang
Joette Tronolone
Douglas Busse, Code Enforcement Officer
Stephen Stachowski, Deputy Town Attorney

Absent - None

OPENING OF PUBLIC HEARING

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

Ayes: All

Noes: None

Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Tronolone, 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 Bedient, seconded by Tronolone, to approve Minutes #2023-05 of May 24, 2023.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2023-019

Request of Laura Staff for a variance for property located at 130 Eagan Drive to erect a 4' fence with an 18' projection into front yard on corner lot (no projection allowed)

Ms. Staff stated she is located on a corner lot, on a dead-end street by Dorrance Park and would like a 6' fence in the side yard with a 4' fence by the road.

Chairperson Hicks questioned if the fence will be 3' from the sidewalk. Ms. Staff stated the fence would be more than 3' from the sidewalk.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 328 Brookside 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; 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 variance for property located at 130 Eagan Drive to erect a 4' fence with an 18' projection into front yard.

Ayes: All

Noes: None

Motion Carried

2023-020

Request of Mary Higgins and Tom Matte for a variance for property located at 14 Lyndale Court to erect a 6' fence in front/side yard (maximum 4' height allowed)

Mr. Matte stated he would like to place a fence from the front of the house and also along the front for privacy. This would be along the side yard where a 4' fence is permitted.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 10, 13, 17, 6, 24, 27, 7, and 23 Lyndale Court.

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, this is for privacy and safety; 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 Tronolone, seconded by Bedient, to close the public hearing and grant a variance for property located at 14 Lyndale Court to erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

2023-021

Request of William Majchrzak for a variance for property located at 72 Covington Drive to construct an 8' x 24' covered patio with 22' front yard setback (30' front yard setback required)

Mr. Majchrzak stated he would like a covered front porch for his children to wait for the bus and to allow the family to use the front yard.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 69, 68, 78, 73, 83, 79, and 65 Covington 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, this will improve the property; 2) Is there an alternative – no; 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 Tronolone, seconded by Lang, to close the public hearing and grant a variance for property located at 72 Covington Drive to construct an 8' x 24' covered patio with 22' front yard setback.

Ayes: All

Noes: None

Motion Carried

2023-022

Request of Brandon Hoerner for a variance for property located at 96 Thomas Drive to: 1) erect a 6' fence with 16' projection into front yard; 2) requesting 6' fence in front/side yard on corner lot (no projection allowed; fences shall not exceed 4' in front/side yard)

Mr. Hoerner stated he would like to fence in his back and side yard for privacy and safety. The projection off the house is 25' to the curb; there is no sidewalk, and the request is for 16'.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 83 and 78 Christopher Drive and 90 Thomas Drive. Chairperson Hicks noted this is a corner lot.

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 this is needed for privacy and security; 2) Is there an alternative – no; 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 variance for property located at 96 Thomas Drive to: 1) erect a 6' fence with 16' projection into front yard; 2) erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

2023-023

Request of Joseph and Jacqueline DiGesare for a variance for property located at 42 Lakeside Drive to: 1) erect a 6' fence with 28' projection; 2) erect 6' fence in front/side yard (max 10' projection allowed; fences shall not exceed 4' in front/side yard)

Mr. DiGesare stated he would like a 6' fence along Lakeside Drive, to the right rear of the property and a 4' fence on the opposite side, enclosing the entire yard. This is a corner lot, and the rear neighbor has a similar fence. An inground pool will be installed in August.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 25, 17, 23, 50, 35, and 43 Lakeside Drive. Chairperson Hicks noted the fence will be 4' from the sidewalk.

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 this is needed for privacy and security; 2) Is there an alternative – no, the fence is needed for the pool; 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 Tronolone, to close the public hearing and grant a variance for property located at 42 Lakeside Drive to: 1) erect a 6’ fence with 28’ projection; 2) erect 6’ fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

2023-024

Request of Dawn Dixon for a variance for property located at 718 Main Street to construct an accessory structure with a 21.5’ midspan (maximum 12’ midspan allowed)

Ms. Dixon stated she would like to build a garage for storage of an RV and vehicles.

Chairperson Hicks stated the lot is 535’ deep and this will be replacing the existing garage. Neighbor signatures with no objection to the variance were obtained from residents at 728, 702, 715, 709, and 712 Main Street and 25 and 21 Klink Place.

Chairperson Hicks stated she had concerns regarding fire access, but correspondence was received from Vigilant Fire Chief Barbra Mann stating she reviewed the project and had no comment on the proposed structure.

Mrs. Tronolone questioned what utilities will be installed other than electricity. Ms. Dixon stated just water; this is just for personal items.

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, this is needed for RV storage; 3) Is the request substantial – yes, but the size of the lot supports the size of the garage; 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 Lang, to close the public hearing and grant a variance for property located at 718 Main Street to construct an accessory structure with a 21.5’ midspan.

Ayes: All

Noes: None

Motion Carried

2023-025

Request of Gregory Majchrowicz for a variance for property located at 291 Doris Drive to extend driveway/walk 6” and 12” off side lot line (3’ separation required from side lot line)

Mr. Majchrowicz stated the current driveway is damaged and very narrow and needs replacement. Currently, there is a fence with a gate opening and Mr. Majchrowicz would like the opening to be on the concrete. The

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driveway at the street will remain the same width. The driveway will be slopped for water so as not to have an impact on the neighbor.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 286, 292, and 285 Doris Drive and 945 Mineral Springs Road. Code Enforcement Office Doug Busse noted 285 Doris Drive is the adjacent neighbor.

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 – yes, but this will make better use of the property; 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 Greenan, to close the public hearing and grant a variance for property located at 291 Doris Drive to extend driveway/walk 6" and 12" off side lot line.

Ayes: All

Noes: None

Motion Carried

OLD BUSINESS

2013-019

Request of David Shearer for review of a variance for property located at 1800 Union Road to allow live music (live music prohibited)

Mr. Shearer stated nothing has changed since he was previously before the Zoning Board of Appeals. There is music on Friday and Saturday and occasionally on Sunday from 9:00 PM – 12:00 AM.

Chairperson Hicks noted the applicant was before the board in 2021 and the following hours were approved: Friday and Saturday night from 10:00 PM – 2:00 AM. Mr. Shearer requested afternoon hours for Sundays from noon – 4:00 PM.

Code Enforcement Officer Doug Busse stated there are no complaints on file in his office or the West Seneca Police Department relative to music. Chairperson Hicks noted there are no residential neighbors that would be impacted by the music.

No comments were received from the public.

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, there is no adjacent residential; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Deputy Town Attorney Stephan Stachowski explained that going forward, the applicant should substantiate how live music increases the profits of the establishment. Chairperson Hicks stated Mr. Shearer will be given advanced noticed as to the requirements needed.

Motion by Lang, seconded by Tronolone, to close the public hearing and grant a two-year variance for property located at 1800 Union Road to allow live music with the following conditions: 1) Friday and Saturday from 9:00 PM – 2:00 AM; 2) Sunday from noon – 4:00 PM; 3) this is two-year variance, at which time the applicant will reappear at the June 2025 meeting.

Ayes: All

Noes: None

Motion Carried

2022-039

Request of Robert Jemiolo for review of a variance for property located at 3377 Clinton Street to allow live music (live music prohibited)

The applicant was not present.

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

Ayes: All

Noes: None

Motion Carried

2023-005

Request of Michael Shaw for review of a variance for property located at 4717 Clinton Street to allow live music (live music prohibited)

Mr. Shaw stated he has mostly had acoustic bands to keep the sound to a minimum and has meet with neighbors to assure he is not disturbing to them.

Chairperson Hicks stated the following correspondence was received from David Bystrak, 4721 Clinton Street:

"In spite of my opposition to live bands playing on the outside deck of Buffalo Creek Bar and Grill, the West Seneca Zoning Board of Appeals has okayed it for the time being. As a neighbor and a customer of Buffalo Creek Bar and Grill, I hope they are a viable and successful business now and in the future. If we work together, I am confident that we can happily co-exist. Though I would prefer no live bands on the outside deck, I would like to be a reasonable, good neighbor and am willing to compromise. Both Mike Shaw Sr. and Jr. have been very reasonable and open to discussing this issue. We have agreed to:

- Bands playing on Friday and Saturday 7:00 PM – 10:00 PM. Sundays 1:00 PM – 4:00 PM.
- The volume level kept to a maximum of 65 decibels as measured on the back deck of my house at 4721 Clinton Street using an app on my iPhone.
- A "sound absorbing" wall or partition to be built on their deck to mitigate the sound reaching my property at 4721 Clinton Street.

Also, I would like to see a defined "Band Season" of June 1 – September 30 each summer."

Mr. Shaw questioned the town code decibel level and noted the outdoor liquor license is from May to October and would like the live music variance to follow suit.

Code Enforcement Officer Doug Busse stated he will talk with Mr. Shaw regarding the town code and decibels. Mr. Lang stated the iPhone app is not reliable.

Deputy Town Attorney Stephan Stachowski stated the sound volume would need to follow the town code for enforcement purposes.

Code Enforcement Officer Doug Busse stated there are no complaints on file in his office or the West Seneca Police Department relative to music.

Mr. Klink, 4760 Clinton Street, stated he agreed with Mr. Bystrak's letter; he is opposed to live music, but this is tolerable. There is a need for the acoustic curtain.

Mr. Shaw stated he would like to have live music inside and outside; this would remain acoustic.

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, the area is residential and commercial; 3) Does the variance change the character of the neighborhood – no, this establishment has been in this location for many years; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Chairperson Hicks requested Mr. Shaw bring back specific data going forward to prove the music boosts business.

Motion by Greenan, seconded by Bedient, to close the public hearing and grant a 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 PM – 4:00 PM; 3) this is temporary variance, the applicant will reappear at the December 6, 2023, meeting.

Ayes: All

Noes: None

Motion Carried

2022-039

Request of Robert Jemiolo for review of a variance for property located at 3377 Clinton Street to allow live music (live music prohibited)

The applicant was not present.

Brian Doster, 3361 Clinton Street, stated he would like to have the variance denied. The rules are not followed, and the music carries over. Mr. Doster did call the police on a Wednesday as music was not allowed, and the bar was closed. Mr. Doster stated it was his understanding the establishment was being sold.

Chairperson Hicks stated Mr. Jemiolo currently has no variance.

Deputy Town Attorney stated the variance has expired. Mr. Jemiolo will have to come back and ask for the variance to be reinstated; the noise ordinance is still in place.

Code Enforcement Officer Doug Busse stated it was his recommendation to call the police if there is live music being played as the variance has expired.

Motion by Hicks, seconded by Greenan, to table review of a variance for property located at 3377 Clinton Street to allow live music until the July 2023 meeting, noting the variance is expired and live music is prohibited on the premises.

Ayes: All

Noes: None

Motion Carried

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ADJOURNMENT

Motion by Greenan, seconded by Tronolone, to adjourn the meeting at 7:19 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary