

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

ZONING BOARD OF APPEALS
Minutes #2023-09
September 27, 2023

No comments were received from the public.

Motion by Tronolone, seconded by Bedient, to close the public hearing and grant a variance for property located at 50 Campus Drive to erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

2023-041

Request of Lorri and Ron Staufenberger for a variance for property located at 3480 Seneca Street to construct an accessory structure with 14' 6" height to midspan (maximum 12' height to midspan allowed)

Ms. Staufenberger stated they are requesting to construct a pole barn towards the back of the property to store classic cars. Newell Place is a dead-end street and approximately six Seneca Street addresses have garages towards Newell Place.

Chairperson Hicks questioned if there will be a living space or heat in the barn. Mr. Staufenberger stated this is just cold storage and may not even have electricity.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 31 and 20 Newell Place along with 3524, 3516, 3470, 3510, and 3488 Seneca Street.

Ms. Greenan questioned the access route. Mr. Staufenberger stated after pulling in the driveway you would make a right; there is an existing driveway.

Chairperson Hicks stated correspondence was received from Erie County Department of Environment and Planning stating they have no recommendation on the variance as this is of local concern.

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, neighbors do not object; 2) Is there an alternative – no, this makes the most sense for the needs; 3) Is the request substantial – no, the applicant is moving closer to the dwelling with sufficient setbacks; 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 3480 Seneca Street to construct an accessory structure with 14' 6" height to midspan.

Ayes: All

Noes: None

Motion Carried

2023-042

Request of Meghan McCarthy for a variance for property located at 722 Cindy Lane to allow the raising of chickens on property (raising of poultry/farm animals not permitted)

Ms. McCarthy stated she is moving into the Cindy Lane home and is looking to bring her six chickens with her. There are no roosters, just egg laying hens. The hens are pets, and the eggs are used for food. This was

originally a homeschool project and the chickens have been with the family for two years. Ms. McCarthy stated she is a Registered Nurse and holds a degree in animal management that encompasses the care and keeping of animals. The coop will be towards the back left corner of the lot.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 716 Cindy Lane. Correspondence was received from Marvin Pawlowski, 728 Cindy Lane, and David Janiszski, 734 Cindy Lane stating:

"We are writing regarding the request to raise chickens at the neighboring property at 722 Cindy Lane. We strongly oppose this for the following reasons:

- The smell and the mess are known to attract rats.
- The property backs up to Buffalo Creek and the wooded area around it. This area is inhabited by coyotes and foxes, both of which will be attracted to the surrounding homes. This would endanger small dogs, cats, and children."

Ms. McCarthy stated a well-kept coop will not have an odor. Six hens will not omit an odor when the coop is maintained daily. Pests are drawn to the smell of food and droppings. Ms. McCarthy stated her current property is wooded and she has never experienced a predator.

Chairperson Hicks stated the West Seneca Police Department does not have any record of a human or a domestic animal being harmed by a natural predator attracted to the chickens. Ms. McCarthy stated she would like to get a privacy fence around her property.

Mr. Bedient noted the property was well kept.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, many other residents have chickens in a residential neighborhood; 2) Is there an alternative - yes; 3) Is the request substantial - no, there are six hens and no roosters; 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 one year variance for property located at 722 Cindy Lane to allow the raising of chicken on property, noting the applicant will return to the September 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2023-043

Request of Agile Cold Buffalo, LLC for a variance for property located at 160 Empire Drive to construct a 70' tall manufacturing building (40' maximum building height allowed in M district)

Mr. Cardwell stated Agile Cold Storage is in Athens, Georgia and currently has two running facilities, three under construction and three projects starting the permitting process. The West Seneca project will be a manufacturing and cold storage facility. Agile is partnering with local food manufacturers who need manufacturing and packaging space. Ninety percent of the operation is cold storage.

Chairperson Hicks questioned what will be manufactured. Mr. Cardwell stated frozen food will be manufactured.

Chairperson Hicks questioned if this is to supplement Rosina Foods. Mr. Cardwell stated Rosina would operate in the manufacturing portion and Agile in the cold storage. Rosina will rent and operate the manufacturing. The ingress and egress will be off Empire Drive in coordination with Rosina's building.

Chairperson Hicks questioned the SEQR process with the Planning Board. Mr. Cardwell stated landscaping will be incorporated into the design; the property will also be fenced in with a standard 6' security fence. Code Enforcement Officer Doug Busse stated this will be approved by the Planning Board.

Chairperson Hicks questioned the lighting and signage on the building. Mr. Cardwell stated he would need to look at finalized drawings to see the exact location of the lighting, normally the lighting points down.

Chairperson Hicks stated the truck docks are on the Clinton Street side and consist of six bays with twelve doors. Mr. Busse stated tonight is strictly for the height of the building. The Planning Board is sorting out the site plan.

Mr. Cardwell referred to the height of the building and explained the 70' tall is the base building. The building consists of very narrow aisles so that operators will sit in a cab and will not be exposed to the frozen environment. Employees will lock onto a wire in the aisle and be guided to and from the correct location by the computer system. Think of them as a specialized forklift that allows our teammates to work in the safest, most accurate and comfortable manner possible.

Ms. Greenan questioned if it was possible to have a lower building height. Mr. Cardwell stated the building will house 20,000 pallets and extra height is needed to accommodate this. Turret trucks are used by employees to go through narrow aisles.

Chairperson Hicks questioned if the local fire district had comments. Mr. Busse stated the fire department had no questions or concerns.

Chairperson Hicks stated the NYSDOT provided correspondence stating the New York State Department of Transportation (NYSDOT) has reviewed the documentation provided for 160 Empire Drive, a height variance for a proposed manufacturing building, and has the following comments:

- NYSDOT has no opinion on the town granting this site a variance for building height.
- Please keep NYSDOT in the loop for any SEQR or site plan review processes for this site. As it is located adjacent to a state highway, permits may be required, or site plan changes be required depending on its design.

Correspondence was received from Erie County Department of Environment and Planning stating they have no recommendation on the variance for 160 Empire Drive as this is of local concern. The Erie County Division of Sewerage Management (DSM) has reviewed the SEQRA submittal for 3200 Clinton Street in West Seneca and provided the following comments regarding 3200 Clinton Street:

- The proposed project is located within Erie County Sewer District No. 1. The sanitary sewers near the proposed project are owned by ECSD No. 1. The sanitary flows are tributary to Erie County trunk and interceptor lines and ultimately the Bird Island Wastewater Treatment Facility.
- Review and approval of any sanitary sewers installed is required by Erie County DSM.
- A Downstream Sewer Capacity Analysis (DSCA) may be required for this project.
- Sanitary sewer Inflow and Infiltration (I/I) removal work in ECSD No. 1 may be required for this project.

- A grease trap sized by DSM standards is required for commercial projects involving food preparation.
- Sanitary sewer system design shall be in accordance with Ten States Standards and Erie County Sewer District Rules and Regulations and Design Requirements.

The design engineer is encouraged to discuss preliminary sanitary sewer plans with DSM in advance of completing sewer design.

Mr. Busse noted final site plan will be held with the Planning Board.

Brian Doster, Fire Commissioner District No. 2, stated Union Fire has a 75' aerial and noted they are surrounded by mutual aid companies that have 100' aerials. Larger buildings sometimes have radio issues and requested the applicant work with the first responders. Mr. Busse stated he will make the Planning Board aware of the issue.

Susan Kims, 99 Covington Drive, stated she was speaking as a resident and had a concern about the height of the building. Mrs. Kims previously resided in another state where a 70' building toppled.

Chairperson Hicks stated during the site plan and permitting process, the town makes every effort to ensure the area and ground that the building is constructed on is sustainable for the project. Mr. Busse stated fully engineered drawings are submitted for review from the foundation to the top. Mr. Busse noted the Certo Bros. building is 90' high.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, neighbors have not objected; 2) Is there an alternative - no, the applicant has indicated the height is necessary; 3) Is the request substantial - yes, the bulk density is large, but the impact on the neighborhood 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 Tronolone, seconded by Lang, to close the public hearing and grant a variance for property located at 160 Empire Drive to construct a 70' tall manufacturing building.

Ayes: All

Noes: None

Motion Carried

2023-044

Request of Christy DiCarlo for a variance for property located at 16 Organ Crescent to construct a 7' x 27' front porch with 26' front yard setback (30' front setback required)

Dwayne Coder was present on behalf of Ms. DiCarlo and stated there is currently a 5-sf porch that needs updating and Ms. DiCarlo would like to be able to use the porch in the evening.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 22, 17, 10, and 11 Organ Crescent.

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, neighbors do not object; 2) Is there an alternative - yes, but the applicant wishes to enjoy

her property; 3) Is the request substantial – no, this is a small setback difference; 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 16 Organ Crescent to construct a 7' x 27' front porch with 26' front yard setback.

Ayes: All

Noes: None

Motion Carried

2023-045

Request of Jason Cummings for a variance for property located at 83 Bayberry Avenue to construct an accessory structure with 1' 4" side yard setback (3' side yard setback required)

Mr. Cummings stated there is currently a garage that stands with the dimensions of the proposed garage. This garage will come down and a new garage will be built in its place with a larger door so vehicles can be pulled in.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 77, 80, 73, and 76 Bayberry Avenue.

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, neighbors do not object; 2) Is there an alternative – no, the existing garage is in poor condition; 3) Is the request substantial – no, every other aspect of the garage is within the zoning code; 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, the existing garage is not serviceable.

Motion by Lang, seconded by Greenan, to close the public hearing and grant a variance for property located at 83 Bayberry Avenue to construct an accessory structure with 1' 4" side yard setback.

Ayes: All

Noes: None

Motion Carried

2023-046

Request of Lorraine O'Shei for a variance for property located at 47 Flohr Avenue to erect a 6' fence in front/side yard (4' maximum height allowed)

Ms. O'Shei stated she would like a 6' privacy fence for her rental property. The tenant owns two German Shephard dogs, and one is a service dog. The tenant has had problems with dogs jumping the fence.

Chairperson Hicks noted the fence would be 28' from the front foundation corner to the side property line and the entire length of the house. Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 58, 54, 37, and 53 Flohr Avenue.

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, neighbors do not object; 2) Is there an alternative – no, this is required for the safety of the tenant and her animals; 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 Greenan, to close the public hearing and grant a variance for property located at 47 Flohr Avenue to erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

OLD BUSINESS

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)

Mr. Jemiolo stated he would like to extend his variance for live music and since the last meeting has had no problems.

Ms. Greenan questioned if there had been any complaints or police reports. Code Enforcement Officer Doug Busse stated there have been no complaints or police reports.

Ms. Greenan requested an update on the sale of the property. Mr. Jemiolo stated he is hoping the property will be sold by the end of the year. There is currently a contract with contingencies.

Ms. Greenan questioned what hours Mr. Jemiolo was looking to have granted for live music. Mr. Jemiolo stated he would like to have Friday from 7:00 PM – 10:30 PM. Saturday, if possible, for special events; the establishment is not typically open on Saturday unless there is a special event.

Brian Doster, 3361 Clinton Street, stated he is against the variance request due to problems throughout the years. Mr. Doster would like the variance to have an end date so the new owners would need to appear before the board.

Chairperson Hicks stated this variance has had time frames due to the problems and a new owner would have to appear before the board.

Mr. Bedient questioned if the applicant can request a special event permit. Code Enforcement Officer Doug Busse stated the applicant may request a special event permit. Applicants are allowed three per year per property. Mr. Doster stated he is not against a special event.

Ms. Greenan questioned if Mr. Doster has seen any violations to the variance since the applicant last appeared. Mr. Doster stated there have been events that have not been so bad, and they have not been worth calling the police on. Mr. Doster disagrees with having to call the police for a matter of record. And they have other things to do.

Ms. Greenan questioned if Mr. Doster had observed violations but did not file them with the police. Mr. Doster stated this is correct.

Chairperson Hicks questioned when Mr. Doster moved into his home. Mr. Doster stated he moved in approximately 1994. Chairperson Hicks noted this establishment has been a bar since the late 1800's. Changes have been made to the footprint of the bar. The objections are valid, but Mr. Doster does live next to a bar. Mr. Doster stated variances, such as an outdoor patio and live music have been granted, and this has had a negative impact on his quality of life. The Zoning Board of Appeals has changed the rules on the conditions of the bar.

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 neighborhood bar; 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.

Motion by Greenan, seconded by Tronolone, to close the public hearing and grant a temporary variance for property located at 3377 Clinton Street to allow live music with the following conditions: 1) Friday from 7:00 PM – 10:30 PM; 2) Sunday from 3:00 PM – 7:00 PM; 3) the variance will expire on January 24, 2024, at which time the current/new applicant will appear before the Zoning Board of Appeals.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Hicks, seconded by Greenan, to adjourn the meeting at 7:44 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary