

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
Joette Tronolone
Douglas Busse, Code Enforcement Officer
Chris Trapp, Town Attorney

Absent - Paul Lang

OPENING OF PUBLIC HEARING

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

Ayes: All Noes: None Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Greenan, seconded by Tronolone, 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 Greenan, to approve Minutes #2023-10 of October 25, 2023.

Ayes: All Noes: None Motion Carried

OLD BUSINESS

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)

Chairperson Hicks noted the applicant was originally before the Zoning Board of Appeals in June requesting live music; a temporary variance was granted on Friday and Saturday from 7:00 PM – 10:00 PM and Sunday from 1:00 PM – 4:00 PM.

Mr. Shaw stated he believed the temporary variance went very well and was diligent with the sound and the time.

Chairperson Hicks stated in June it was discussed that Mr. Shaw should make the Zoning Board aware of the income profits received while hosting live music. Mr. Shaw stated the income is almost cut in half when there is no music. The music being played is acoustic.

Chairperson Hicks stated a form is being designed by a Zoning Board of Appeals member to account for proof of sales.

David Bystrak, 4721 Clinton Street, stated he is the neighbor across from the establishment. Residents prefer peace and quiet in their home and the West Seneca Town Code reinforces this belief. Mr. Bystrak has lived in his home for 19 years and has never had issues with the restaurant until the variance was granted. Live music is performed on the deck and Mr. Bystrak has met several times with the owners to compromise on ground rules. Mr. Shaw started out being very agreeable

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

**ZONING BOARD OF APPEALS
Minutes #2023-11
December 6, 2023**

and the music started out at a quiet level and ending on time. Throughout the summer the music became louder and did not follow the established end time frame. A sound blocking wall was supposed to be erected and music was not supposed to be every weekend. Mr. Bystrak suggested there be no amplifiers or sound systems, a defined music season from June - September, restrictions on how many weekends, and an earlier end time on Friday and Saturday.

Code Enforcement Officer Doug Busse noted during the last approval process, Mr. Shaw stated a sound barrier would be put in place and believed this would help the direct neighbor across the street. Mr. Bystrak stated this may help and the only weekends that did not have music were due to inclement weather.

Dale Kling, 4760 Clinton Street, stated he tried to work with the applicant who stated this would only be a couple times a month. Mr. Kling suggested some landscaping along the road side portion of the property to absorb the sound. Mr. Kling stated indoor live music should not be an issue to the neighbors.

Joanne Biniaszewski, 239 Borden Road, stated a neighbor had landscaping that created a barrier for her residence for the sound coming from the establishment. The outside noise from the deck echoes to the neighboring residences. Mrs. Biniaszewski stated she is not against inside music. There were some nights that the acoustic music from the patio was loud and carried.

Noel Smithers stated she was the bar manager; the music was acoustic with one or two people and only a guitar and a couple of speakers pointed towards the restaurant. The music always ended at 10:00 PM except for a one-time birthday celebration. The music was not played every weekend.

Mr. Busse stated there are no complaints on file with the police department. There are emails from Mr. Bystrak expressing concerns before this meeting and the June approval.

Ms. Greenan stated a variance is an exception to the rule and they do not have to be granted, but the town wishes to help businesses succeed and questioned if the applicant would object to the time frame of 6:00 PM – 9:00 PM. Ms. Smithers stated the establishment has a very good dinner crowd and the 7:00 PM start time did not conflict with this.

Mr. Shaw stated he did not go with the sound barrier due to the fact he was only allowing acoustic music. Mr. Bedient stated his disappointment that the sound barrier was not installed and noted Mr. Shaw previously had invited members to come see the barrier. Mr. Shaw stated in retrospect, he should have installed this.

Mr. Busse questioned if there was any plan to have live music before the spring season. Mr. Shaw stated there was no plan and would go forward with the sound barrier.

Ms. Greenan questioned if Mr. Shaw would stagger the weekends for music. Mr. Shaw stated this is sometimes figured out with the availability of the musicians along with the weather and is difficult to control and tries not to have every Friday, Saturday, and Sunday.

Town Attorney Chris Trapp suggested making the sound barrier a condition.

Chairperson Hicks stated neighbors do not have a problem with indoor music and felt it appropriate to approve live indoor acoustic music for the same hours and previously established. There would be no outdoor music until the end of April meeting. At the April meeting, Chairperson Hicks would like the sound barrier installed, or the plan/timeline along with income statements.

Mr. Bedient stated he would like Mr. Shaw to investigate landscaping along the street side of the property and suggested trying the barrier out with the neighbors. Mr. Busse requested Mr. Shaw work with the Code Enforcement Office with ideas and stated he would be willing to facilitate with the neighbors a trial run of the barrier.

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

**ZONING BOARD OF APPEALS
Minutes #2023-11
December 6, 2023**

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 not a prevalent request; 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.

Motion by Tronolone, seconded by Greenan, 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) indoor only; 2) Friday and Saturday from 7:00 PM – 10:00 PM; 3) Sunday from 1:00 PM – 4:00 PM; 4) this is temporary variance, the applicant will reappear at the April 2024, meeting at which time financial proof of the burden of no live music will be presented along with the sound barrier in place or the plan to install will be in place with the Code Enforcement Office.

Ayes: All

Noes: None

Motion Carried

2023-027

Request of Kelly Riordan for a variance for property located at 247 Main Street to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Ms. Riordan stated she is raising six hens in the rear of her property.

Chairperson Hicks stated corespondance was received from the adjacent neighbor stating the coop was moved from the rear of the property to an area behind Ms. Riordan's garage. Ms. Riordan stated she recently purchased an amish shed that has been placed behind the garage. Ms. Riordan spoke to the neighbor and explained the chickens were not being moved to the new locattion. Weather permitting, the coop will be moved to the rear of the property and the neighbor stated to Ms. Riordan he did not have an issue with this.

Chaiperson Hicks questioned the current location of the chickens. Ms. Riordan stated they are in the rear of the yard and this is where they will stay.

Andy Oscapalya, 255 Main Street, stated he did send a letter to the Zoning Board, however after speaking with Ms. Riordan he has no problem with the chickens as long as they are in the back of the property.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no; 2) Is this a unique circumstance – yes, the lot is very deep; 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.

Motion by Greenan, seconded by Bedient, to close the public hearing and grant a temporary variance for property located at 247 Main Street to allow raising of chickens on property with the following conditions: 1) the chickens will be housed in the rear of the property; 2) the applicant will reappear at the December 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2023-030

Request of Edward Culliton for a variance for property located at 20 Florence Avenue to allow a second driveway for new garage access (maximum one driveway allowed on residential property)

Mr. Culliton submitted a drawing for the new garage and apologized for placing the driveway before the garage. The footers/foundation would be set in the spring. There are several companies being consulted to build the structure, but no contract has been signed. Mr. Culliton would be assisting with the build. The height of the garage would be less than 12' at the middle of the roof line.

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

**ZONING BOARD OF APPEALS
Minutes #2023-11
December 6, 2023**

Code Enforcement Officer Doug Busse stated the town code allows 12' to the middle of the roof span and he has explained the town code requirements to the applicant.

Chairperson Hicks stated she was inclined to table the request until the garage had definite plans. Parking cannot be allowed in the driveway without the accessory structure. Ms. Greenan concurred with Chairperson Hicks.

A resident questioned how many buildings are allowed on a property. Mr. Busse stated 30% of a rear yard is allowed to be covered. The resident stated there are other structures and the property is an eyesore.

Timothy Slisz, 33 Florence Avenue, questioned if the driveway can be used. Chairperson Hicks stated nothing should be parked on the driveway.

A resident at 30 Florence Avenue stated he was not opposed to the project and the request.

Chairperson Hicks questioned if vehicles have been parked in the driveway. The resident stated there have not been vehicles parked in the driveway.

Motion by Greenan, seconded by Tronolone, to table the item until the March 2024 meeting.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2023-049

Request of Matthew Spencer for a variance for property located at 86 Barnett Drive to erect a 6' fence in front/side yard with 23' projection into front yard (maximum 4' height in front/side yard; no projection into front yard)

Mr. Spencer stated he is located on a corner lot and would like the fence for the safety of his family and family pet along with privacy.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 80 and 98 Barnett Drive along with 8 and 9 Erwin Drive.

No comments were received from the public.

Chairperson Hicks referred to the area variance balancing test in regard to the height: 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 privacy and safety of the pet; 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 86 Barnett Drive to erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

Chairperson Hicks referred to the area variance balancing test in regard to the projection: 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.

**WEST SENECA COMMUNITY CENTER
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**ZONING BOARD OF APPEALS
Minutes #2023-11
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Motion by Tronolone, seconded by Bedient, to close the public hearing and grant a variance for property located at 86 Barnett Drive to erect a 6' fence in front/side yard with 23' projection into front yard.

Ayes: All

Noes: None

Motion Carried

2023-050

Request of Joanne and Robert Biniaszewski for a variance for property located at 239 Borden Road to erect a 6' fence on side of house in side yard (maximum 4' height allowed on side of house)

Mrs. Biniaszewski stated she would like a fence to protect against the elements where bushes were removed by a neighbor along with privacy and safety.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 249, 248, 240, 232, 225, and 229 Borden Road. Correspondence was received from the NYSDOT stating they did not object to granting the variance. The Erie County Department of Environment and Planning stated 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, 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 - no a hedge row previously provided relief.

Motion by Greenan, seconded by Tronolone, to close the public hearing and grant a variance for property located at 239 Borden Road to erect a 6' fence on side of house in side yard.

Ayes: All

Noes: None

Motion Carried

2023-051

Request of Thomas Schoellkopf for a variance for property located at 91 Rosewood Drive to erect a 6' fence in side yard (maximum 4' height allowed in side yard)

Mr. Schoellkopf stated he would like a fence with a gate into the side yard to alleviate the deer in the yard and for safety and privacy.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 127 and 88 Rosewood 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 deer will not be able to get into the yard; 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 - no, but this is not the determining factor.

Motion by Bedient, seconded by Greenan, to close the public hearing and grant a variance for property located at 91 Rosewood Drive to erect a 6' fence in side yard.

Ayes: All

Noes: None

Motion Carried

**WEST SENECA COMMUNITY CENTER
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**ZONING BOARD OF APPEALS
Minutes #2023-11
December 6, 2023**

ADJOURNMENT

Motion by Tronolone, seconded by Greenan, to adjourn the meeting at 7:32 PM

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary