

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

ZONING BOARD OF APPEALS
Minutes #2024-02
February 28, 2024

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
Joette Tronolone
Paul Lange
Douglas Busse, Code Enforcement Officer
Steven Stachowski, Deputy Town Attorney

Absent Edmund Bedient

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 Lang, 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 Tronolone, seconded by Greenan, to approve Minutes #2023-12 of December 6, 2023.

Ayes: Greenan, Hicks, Tronolone Noes: None Abstain: Lang Motion Carried

Old Business:

Chairperson Hicks advised that the town does not have in its current Code the ability to allow the raising of chickens on residential property. The Zoning Board utilizes area variances for review and approval. There may be a future resolution to aid in the process. Code Enforcement Officer Doug Busse advised that he has spoken with the Town Attorney regarding the approach to variances for the raising of poultry/farm animals and the process is being evaluated.

All renewal variances previously have presented their application and their neighbors' letter of support and therefore the Board confirms with the Police and Code Enforcement Departments to determine if any complaints have been filed.

Ayes: All Noes: None Motion Carried

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2022-008

Request of James and Erin Rathmann for renewal of a variance for property located at 42 Beechwood Drive to allow raising of chickens on property (raising of poultry/farm animals not permitted).

James Rathmann presented along with his two (2) daughters who are raising five (5) hens and no roosters for eggs for their family. No issues from Code Enforcement or the Police Department.

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, most people do not have chicken; 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 Lang, seconded by Tronolone, to close the public hearing and grant a temporary variance for property located at 42 Beechwood to allow raising of five (5) chickens on property with the following conditions: 1) the applicant will reappear at the February 2025 meeting.

Ayes: All

Noes: None

Motion Carried

2020-048

Request of Jeffrey Walters for renewal of a variance for property located at 49 Country Lane to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Tabled to the end of the meeting, motion by Tronolone, seconded by Greenan.

Ayes: All

Noes: None

Motion Carried

2020-024

Request of Elisa and Jason Kirby for renewal of a variance for property located at 102 Toby Hill Drive to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Jason Kirby presented and stated he has six (6) hens and no roosters. No issues from Code Enforcement or the Police.

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, most people do not have chickens; 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 Lang, to close the public hearing and grant a temporary variance for property located at 102 Toby Hill Drive to allow raising of six (6) chickens on property with the following conditions: 1) the applicant will reappear at the February 2025 meeting.

Ayes: All

Noes: None

Motion Carried

2021-064

Request of Jessica Sawyer for renewal of a variance for property located at 866 Mill Road to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Jessica Sawyer presented she has three (3) hens and no roosters. They are used not only for their eggs, but educational purposes as she brings them to Potter Road BOCES school. Does not plan to extend the flock. No issues from Code Enforcement or the Police.

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, most people do not have chickens and uses it for educational purposes; 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 Lang, to close the public hearing and grant a temporary variance for property located at 866 Mill Road to allow raising of three (3) chickens on property with the following conditions: 1) the applicant will reappear at the February 2025 meeting.

Ayes: All

Noes: None

Motion Carried

2016-018

Request of Deborah Arzaga for renewal of a variance for property located at 227/229 Pellman Place to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Tabled to the end of the meeting, motion by Greenan, seconded by Tronolone.

Ayes: All

Noes: None

Motion Carried

2019-010

Request of Tim and Robin Stolinski for renewal of a variance for property located at 227 Seneca Creek Road to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Tabled to the end of the meeting, motion by Greenan, seconded by Tronolone.

Ayes: All

Noes: None

Motion Carried

Doug Busse will follow up with them as their house was listed for sale.

2020-019

Request of Cynthia Gaasch for renewal of a variance for property located at 68 School Street to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Chairperson Hicks inquired if she would like us to use her new name, Sullivan. Cynthia Gaasch-Sullivan presented has seven (7) and no roosters and uses their eggs for her family and for educational purposes. She is a teacher at City Honors. No issues from Code Enforcement or the Police.

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, most people do not have chickens and for educational purposes; 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 Lang, to close the public hearing and grant a temporary variance for property located at 68 School Street raising of seven (7) chickens on property with the following conditions: 1) the applicant will reappear at the February 2025 meeting.

Ayes: All

Noes: None

Motion Carried

2022-055

Request of Paul Daley for a variance for property located at 800 Reserve Road to allow raising of a goat and chickens on property (raising of farm animals/poultry not permitted).

Paul Daley presented he has ten (10) hens and no roosters on his 2 acres of property. Requesting the addition of a miniature goat as he recently built a new barn. The goat was on the original application and neighbors were notified. Mr. Daley plans to secure the goat from Springville Auctions. Chairperson Hicks advised that the board would be against an intact male goat. Mr. Daley indicated it would be female or wether goat. Mr. Daley has three (3) children who also provide care and maintenance for the hens. The barn is located approximately 150 yards beyond his residence. No issues from Code Enforcement or the Police.

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, most people do not have chickens and uses the eggs for his family; 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.

Ms. Tronolone inquired the purpose of having the goat. Mr. Daley stated that it would provide additional hands on trades as opposed to offices and balance out the circle of life and entry level farming.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant a temporary variance for property located at 800 Reserve Road to allow raising of ten (10) chickens and a wether miniature goat on property with the following conditions: 1) goat must be either female or a wether miniature goat; 2) the applicant will reappear at the February 2025 meeting.

Ayes: All

Noes: None

Motion Carried

2023-03

Request of Gina Geller for a variance for property located at 23 Idlewood Drive to allow raising of chickens on property (Raising of farm animals/poultry not permitted).

Brian Geller presented on behalf of his wife Gina, they currently have four (4) hens and no roosters and would like to add two (2) more for a total of six (6). The hens live in a coop with an attached run and the family uses the eggs. No issues from Code Enforcement or the Police.

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, most people do not have chickens; 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 Lang, seconded by Greenan, to close the public hearing and grant a temporary variance for property located at 23 Idlewood Drive to allow raising of six (6) chickens on property with the following conditions: 1) the applicant will reappear at the February 2025 meeting.

Ayes: All

Noes: None

Motion Carried

2020-048

Request of Jeffrey Walters for renewal of a variance for property located at 49 Country Lane to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Tabled to the next meeting in March 2024, motion by Tronolone, seconded by Lang.

Ayes: All

Noes: None

Motion Carried

2016-018

Request of Deborah Arzaga for renewal of a variance for property located at 227/229 Pellman Place to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Tabled to the next meeting in March 2024, motion by Tronolone, seconded by Lang.

Ayes: All

Noes: None

Motion Carried

2019-010

Request of Tim and Robin Stolinski for renewal of a variance for property located at 227 Seneca Creek Road to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Tabled to the next meeting in March 2024, motion by Tronolone, seconded by Greenan.

Ayes: All

Noes: None

Motion Carried

Note: Doug Busse will follow up with them as their house was listed for sale.

New Business:

2024-001

Request of Robert Hopkins of Hopkins Solutions LLC for a variance for property located at 5190 Seneca Street to erect a temporary storage structure within 15' setback to lot line. 1.) (Temporary structures are not permitted 2.) 30' setback required).

Robert Hopkins presented looking for a variance to have a shipping container (that he owns) on the property. Chairperson Hicks advised that there are 2 variance requests: The shipping container and the length of the setback from the property lot line.

Mr. Hopkins is not the owner of owner of the property and advised that Mark Schiffauer is the owner and does he did acknowledge the requests for both variance in his letter dated February 28, 2024. Correspondence was received from Mr. Garrett Hacker of the County Highway DPW who has no concerns about the request. Correspondence was also received from NYS DOT who advised it does not appear to have signific impact to traffic and no opinion on the Town granting a variance for a temporary structure in the location described. Hopkins Solutions LLC does excavation work and does maintain some construction vehicles, the location is for these vehicles. Mr. Hopkins goal is to free up space by using the shipping container as a storage area rather than the existing building. Mr. Hopkins also indicated that he is trying to clean up the area so as not to create an eyesore with all the vehicles, trailers, etc. This temporary structure would be in place for at least one (1) year. Depute

Town Attorney Stachowski does recommend a specific time limit on the request to either come back for review or for the temporary structure to be gone. Mr. Hopkins did indicate that he is experiencing some difficulties with the owner of the sale of the property in negotiations and therefore he does not intend to purchase this property. Discussions were held on where all the vehicles and equipment would go if not on the property. He does have the ability to store some of the equipment in the shop across the street. Mr. Hopkins does have the neighbors support letters and provided them to Chairperson Hicks for the record specifically: 5147 Seneca Street and 1927 Center Road. Deputy Town Attorney Stachowski inquired about the Town Code 120 Zoning Article II Section 120-24 if each section a. b. and c. is an and/or. Code Enforcement Officer Busse indicated it is viewed as C. *Any temporary structure or use permitted by the Board of Appeals as authorized in Article VII* to cover the application on all basis. Chairperson Hicks inquired if this is generally how Code Enforcement Officer Busses interprets the code to which Busse confirmed yes. Mr. Hopkins does plans to paint the shipping container for aesthetics. The Town Code currently does allow for everything to be on the lot. The Planning Board would next go over everything including the dirt pile to address landscaping, screening, etc. The existing position of the shipping container is currently in the setback (parallel to Seneca Street) as asked by both Deputy Town Attorney and Chairperson Hicks. References were made on the survey that was provided at the time of the application. Chairperson Hicks ask for legal opinion on whether this project should be forwarded to the Planning Board to straight out the configuration of the lot. Deputy Town Attorney Stachowski does recommend it to go before the Planning Board however the shipping container is currently located within the setback and suggested a ninety day (90) approval for the setback to return back to the Zoning Board. Furthermore, stated there still is much to go over as this is such a unique lot. If the requirement is to put the shipping container behind the building, Mr. Hopkins does have concerns about when the vehicles exit onto the street to cause debris (rocks, mud, grass etc.) onto the roadway. The question arose as to the specifications of the setback measurements based off the survey and the width of the storage container and the length from there to the lot line. The way the setbacks are calculated are based from the shortest point.

Deputy Town Attorney Stachowski recommends the balancing test to determine if the Board wants to allow it or have Code Enforcement go back out to the property for measurements based on that it is in the setback. Greenan inquired if tabling it would be more beneficial at this point. Code Enforcement Officer Busse agreed with the additional timeframes.

Chairperson Hicks stated she would like to have the applicant paint the shipping container, clean up the debris and rearrange the construction vehicles on the site with a 30-60 day variance then refer this project to the Planning Board for their site plan. Code Enforcement Officer Busse advised that is what the Planning Board would review the site plans, what is proposed and what will be required including limitation and restrictions. Chairperson Hicks asked who owns the existing 6 foot fence and Code Enforcement Officer Busse confirmed that this was done under separate permit with the owner of the property who came before the Planning Board many years ago. Greenan reminded the Board that Planning Board cannot approve site plans without an approved variance(s).

Code Enforcement Officer Busse would like to meet the applicant at the site to get specific measurements and determine exactly where items would be located.

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

Ayes: All

Noes: None

Motion Carried

2024-002

Request of Applegate Dental for a variance for property located at 2177 Union Road to install LED sign within 500 ft of residential property with 53-sf of signage. 1.) (LED sign not permitted within 500 ft of residential property) and 2.) maximum 40-sf allowed).

Paul Lang recused himself from the item at 7:10pm due to a conflict of prior involvement as a architect of the building.

Chris McCaffery of Ulrich Sign presented with the request to have a Watchman digital LED sign located in corner of the property lot. Dr. Lee Shainbrown advised that the mailbox and the sign are already removed.

Chairperson Hicks advised that the Town has specific regulations as to the size, height, coloring, what can go on the sign, hours the sign can be lit. Want to be sure that whoever will be programming the sign be make aware of the code requirements. Confirmed by Code Enforcement Officer Busse. He advised that the main complaint is the brightness and blinking of an electronic sign. Applicant confirmed he is aware of the code requirements and stated this is a Watchman digital LED sign that automatically dims at night.

Deputy Town Attorney Stachowski noted in the NYSDOT letter that the State thought the sign location may be in the right of way. Code Enforcement Officer Busse did note that and when the application was submitted he advised that nothing can cross into the right of way. Furthermore, Code Enforcement Officer Busse advised that during construction may wish to contact NYSDOT for location purposes so they are aware and approve of the location

Chairperson Hicks read the email from Mr. Garrett Hacker of the County Highway DPW who has no concerns about the request. Received correspondence from NYSDOT does appear to have a concern about the location described appears to possibly be within the state highway right of way, no construction is to be permitted with the right of way. If the Town grants the variances as requested, additional signage permits may be required from NYSDOT due to the proposed location adjacent to the State Highway. Please keep NYSDOT in the loop for this request and if the variance is granted, additional NYSDOT signage information can be provided at that time before any sign construction is started.

Code Enforcement Officer Busse stated the based upon the location set forth on the survey the sign location is not in the right of way. It is outside of the right of way. Chairperson Hicks requested that Secretary Newton provide the applicant with copies of the email correspondence the Town received from NYSDOT.

Mr. McCaffery inquired if it was consistent with all other signage on Union Road. The Town feels that the information provided is sufficient, however it is the applicant's responsibility to adhere to any requested information for NYSDOT.

Chairperson Hicks thanked the applicants for making investment in the property. Yes, confirmed neighbors were approached including a neighbor on Union Road. The furthest house from the subject property on Woodbine has an issue with the sign (reference on the aerial photo with a star – 47 Woodbine) and not in favor. Otherwise, letters of no objection from the following: 24, 29, 30, 33, 38, 39,

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46, 54, 58 Woodbine and 2185 Union Road (addresses were recommended by Code Enforcement Officer Busse).

There are two (2) variances to be considered:

A sign within 500 ft of residential property with 53-sf of signage (LED sign not permitted within 500 ft of residential property). Chairperson Hicks referred to the use variance balancing test: 1) Is there an undesirable change to the neighborhood, no; 2) Can a reasonable return be achieved by another method – the applicant states no; 2) Is this a unique circumstance – yes, existing signage would not be always visible; 3) Does the variance change the character of the neighborhood – no most businesses have a lighted sign; 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 variance for property located at 2177 Union Rd.

Ayes: Hicks, Greenan, Tronolone Noes: None Abstain: Lang Motion Carried

A sign size of 53 sq. ft. (maximum 40-sf allowed) for the entire sign. Applicant advised that a 40 sq. ft. is not ideal for the location, to be visible for the speed of traffic on the roadway, smaller than some of the other signs in the area, only asking for additional 13 sq. ft. Greenan asked if Applicant is open to smaller sign. Mrs. Danielle Shainbrown responded that the neighbors to north side of the property have trees which reduce visibility. They are having hard time recruiting new patients and feel strongly that the LED sign will aid in their efforts.

Chairperson Hicks referred to the use variance balancing test: 1) is there an undesirable change to the neighbor, no, there are neighbor letters in support; 2) Is there an alternative, no the signage is needed for visibility 3) is the request substantial – no 4) Does the variance have an impact on the environment - no night brightest should not be an issue 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 the variance for property for a sign size of 53 sq. ft.

Ayes: Hicks, Greenan, Tronolone Noes: None Abstain: Lang Motion Carried

Paul Lang rejoined the meeting at 7:35 pm.

Chairperson Hicks reminded everyone that the next Zoning Board of Appeals will be on March 27, 2024 at 6:00 PM, in the West Seneca Community Center, 1300 Union Road.

ADJOURNMENT

Motion by Tronolone, seconded by Greenan, to adjourn the meeting at 7:36 PM

Ayes: All Noes: None Motion Carried

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Respectfully submitted,
Kate Newton
Town Clerk/Zoning Board Secretary