

**WEST SENECA ZONING BOARD OF APPEALS
1300 Union Road, West Seneca, NY 14224
6:00 pm in the Community Center on May 22, 2024**

MEETING MINUTES

Meeting #2024-05

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 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
Steven Stachowski, Deputy Town Attorney

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 Greenan, that proofs of publication be accepted.

Ayes: All Noes: None Motion Carried

APPROVAL OF MINUTES

Motion by Tronolone, seconded by Lang, to table Minutes #2024-04 of April 24, 2024 until the next meeting on June 26, 2024.

Ayes: All Noes: None Motion Carried

OLD BUSINESS:

SPR 2021-11

Request of Kevin Richlmayr and Stacy Greiner for renewal of a variance for property located at 4211 Clinton Street to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Motion by Tronolone, seconded by Greenan, to table the renewal of a variance for property located at 4211 Clinton Street to allow raising of chickens on property (raising of poultry/farm animals not permitted) until the end of the meeting as the applicant was not present.

Ayes: All

Noes: None

Motion Carried

Motion by Tronolone, seconded by Lang, to table the renewal of a variance for property located at 4211 Clinton Street to allow raising of chickens on property (raising of poultry/farm animals not permitted) until the June meeting and for Town Clerk Newton to send a letter to the applicant.

Ayes: All

Noes: None

Motion Carried

SPR2022-047

Request of Amanda Lanyzs for renewal of a variance for property located at 88 Lyndale Court to allow raising of chickens on property (raising of poultry/farm animals not permitted).

Resident was not present, and the letter was returned. Will be checking to see if Ms. Lanyzs is still living in the town.

Motion by Tronolone, seconded by Lang to table the renewal of a variance for property located at 88 Lyndale Court to allow raising of chickens on property (raising of poultry/farm animals not permitted) until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

Motion by Tronolone, seconded by Bedient, to table the renewal of a variance for property located at 88 Lyndale Court to allow raising of chickens on property (raising of poultry/farm animals not permitted) until the June meeting and for Town Clerk Newton to send a letter to the applicant.

Ayes: All

Noes: None

Motion Carried

SPR 2023-5

Request of Michael Shaw for renewal of a variance for property located at 4717 Clinton Street to allow live music on property (live music not permitted).

Mr. Shaw is looking to have live music Saturdays 7-10 P.M. and Sundays 1-4 P.M. Currently there is no permission for live music on this property.

Proof of financial hardship was given to the Board. A spreadsheet was created by Mr. Shaw using a Point-of-Sale program (Toast), that includes the months April 2023 – September 2023. Blue indicates music. Red indicates no music. The spreadsheet shows food and beverage sales. Mr. Shaw swears the amounts and percentages shown are truthful and accurate. Ms. Hicks mentioned that the writing at the top of the page regarding the red (no music) and blue (music) numbers and percentages were written by her.

The sound absorbing wall is up and a picture was provided/shown on Mr. Shaw's cellphone. It shows the artist's rendering of the esthetics of the wall. It was questioned if the rendering would be considered a sign - it would be a discussion that could be had internally with Code Enforcement's office. Town code was questioned whether a sign needed to be the business or if it could be the business product - it can be the business or product of the business. It cannot promote another business off site, according to the sign code.

It was confirmed that the variance is requesting both inside and outside music. Previously approved for indoor music only.

David Bystrak of 4721 Clinton Street stated the numbers are skewed, in his opinion. The only time they did not have music was when the weather was crummy. Ms. Hicks questioned if he had seen the records that were provided, to which Mr. Bystrak stated he had not. Ms. Hicks stated the records provided were from last year when the permit was active. Mr. Bystrak is not sure what Mr. Shaw is comparing the data to. He then questioned the soundproof wall, stating that it is better than nothing. He thought it was to be an acoustical sound absorbing wall. Mr. Bedient said he looked at the pictures provided, and it appears the OSB (fiber board) wall is currently up, but they have not put the soundproofing up as of yet.

This is the fourth time Mr. Bystrak has voiced his opposition to live music. He is the closest neighbor and his living room and bedroom both face the deck where this music is played. He feels that this is a quality-of-life issue, relative to outside music being played. The town has a live music prohibited rule on the books because of this. Mr. Busse arranged a sound check last week, which went well. The bar did play a band last week which was slightly louder but was tolerable. Mr. Bystrak is trying to be reasonable. If the music stayed at that level, he could probably live with it, but would like the board to know that he is officially opposed to live music. The sound check was done on May 17, 2024 Mr. Busse met with the owner and Mr. Bystrak at the establishment. A bluetooth speaker was put in the area where the band would be playing and was played at relatively loud level, in Mr. Busse's opinion. According to Mr. Shaw this is louder than the bands would be playing. They all then walked over to Mr. Bystrak's property and were okay with the noise level, if maintained at that level. Mr. Busse indicated that it really comes down to being a good neighbor and recommends an extremely short approval, so that he can revisit with the neighbor to see if he has any other questions or concerns or has any positive things to say. Ms. Hicks questioned what the lead time was to cancel bands if they were not granted approval – Mr. Shaw advised that most times 30 days notice, but would need to speak with the person responsible for booking the music.

Mr. Bystrak offered a few suggestions that may help. Changing the hours of the live music on Friday night from 7-10 P.M. to 6-9 P.M. He feels that this would not hurt the business as people tend to come out earlier for happy hour. He also proposed that there be a defined live music season of June – September only. He feels that these changes would be very reasonable. He fully supports the one-month trial that Mr. Busse suggested to see how things go.

Dale Kling of 4760 Clinton has lived here all his life. About 25 years ago it was stated that there was to be no outdoor music. Many owners of this establishment have come and gone. In 2005 there were fireman picnics every weekend. A few owners later, the Shaws decided to have music but did not have permits and claimed that they did not know there were stipulations. For the last two years the

current owners have been promising an acoustic wall. This past year there were promises of the wall being ordered. He is not completely opposed to the music but would like to see a bit of a compromise between the parties.

Noel Smithers, bar manager of the Buffalo Creek Bar and Grill, spoke with Mr. Busse regarding the weekend they are referring to and got approval. The ability to get their permit last month was bumped to this month's agenda. She was asked to reach out to the neighbor, which she did. She was present the nights the band was playing and made sure they were done two minutes early. Mr. Bystrak reached out to her to thank her. They have followed the rules of the time (7-10 P.M.). The bar makes sure the band is absolutely done by 10 P.M., sometimes they are done a bit earlier. Mr. Busse confirmed he did speak with Noel the weekend before May 4th. Furthermore, he advised this was a one-time approval because the weather was supposed to be nice and provided that she reach out to the neighbors and Mr. Bystrak, which were done. There were no other phone calls about having music the following weekend and Mr. Busse reiterated that was not approved. The town gave them the one-time approval and allowed them to have music that one weekend. Permission was not granted for any other times. Mr. Busse emphasized if there is no approval set in place tonight, then there is no live music allowed whatsoever until there is approval from the Zoning Board. These decisions are due to the issues that have previously been brought forward. Ms. Hicks requested confirmation that music was only allowed on May 4th and 5th. Mr. Busse stated it was but believes it was only played on May 4th as the weather was cooperative and not on May 5th. According to the neighbors who advised that music was also played on May 18th and 19th, now seemingly without approval. The owner stated that there was a communication misunderstanding. Mr. Shaw thought that when his daughter spoke with Mr. Busse, they were getting approval for the whole month of May, not just that first weekend. Ms. Hicks reiterated that this puts the Board in a bad spot because of this situation.

Clarification of the outdoor soundproofing was questioned. The OSB (fiber board) is up. It was questioned if soundproofing was installed outside yet -there is soundproofing inside the wall (like insulation in a house) and there will be some on the outside as well. The wall is made up of two pieces of fiber board with 4 inches of sound proofing (insulation) in between. There will be insulation on the outside as well. Ms. Hicks questioned if there was any type of rating to provide to the board. It was also questioned whether the artwork will be on both sides of the fence. It was confirmed there will not be artwork on both sides. Ms. Hicks stated that she would like to see some type of substantiation/verification of the sound barrier. She would like this to be part of the record. This will be a condition of the approval.

Ms. Greenan questioned if there were any complaints or police reports filed regarding the music during the weekend of May 18th and 19th – none of which were made known to the Town.

Mr. Shaw apologized to the Board about the misunderstanding between him and his daughter regarding the timeframes of approval.

Ms. Greenan commented on a letter from Mr. Bystrak that says the time for music on Sundays from 1 P.M. to 4 P.M. has not been an issue but asks that the times on Friday and Saturday nights be changed to 6 P.M. to 9 P.M. as 10 P.M. is too late for live music in a residential neighborhood. Mr. Shaw stated changing the time to 6 P.M. is hard as it is in the middle of the dining rush. Having the

bands come in at 7 P.M. works well and keeps people staying longer. The times requested in the variance are Fridays and Saturdays 7 P.M. to 10 P.M. and Sundays 1 P.M. to 4 P.M. Ms. Greenan questioned if both parties would be willing to compromise with an end time of 9:30 P.M., to which Ms. Smithers questioned when the dispute was going to end. Mr. Bystrak again reiterated at this point and time, it is an ongoing situation and a quality-of-life situation. There is a law of no live music.

Ms. Hicks advised that the Board's objectives are to come to a decision that benefits the business to see them succeed, the neighbors to have a peaceful place to live, and the Town in general to prosper and grow. Mr. Bedient would like to consider a time slot of 6:30 P.M. to 9:30 P.M. for possibly a month and see how things go. He is very happy with the way the neighbors are handling things. He does not want to keep making the neighbors come back every month and questioned if there was a way to get their input without them having to keep coming back? The Board wants to keep a tight reign on what goes on and keep the lines of communications open.

Mr. Lang being an architect, stated that if the wall is made as they say, he thinks the rating on the soundproof wall has an SCC Rating of 42, which is a standard residential wall. It is an average sound absorption wall.

Ms. Tronolone was concerned that they are back again, and the sound barrier wall is not complete. Mr. Shaw indicate that it is complete, other then the paint and logo.

Ms. Smithers stated there is not a band per se, it is one or two acoustic guitars and singing with a microphone and an amplifier or two. She felt that the music played was no louder than when the sound test occurred on May 17th.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – No, the applicant has indicated and also demonstrated that the live music does increase the volume of people and the amount of money they make; 2) Is this a unique circumstance – Yes, to her knowledge there are only two or three of these in the whole town; 3) Does the variance change the character of the neighborhood – No, generally speaking it does not change the character of the neighborhood, although there is an impact on the neighborhood at the time the music is to be allowed; 4) Is this a self-created hardship – Yes, but this is not the determining factor.

There have been no police reports or complaints, other than the people that have come before the Board – Confirmed by Mr. Busse. Ms. Greenan supports what was said on the balancing report and would like to state her position on the matter – after hearing answers and the discussion had with the Board she supports the 7 P.M. to 10 P.M. time frame, but would like a very short variance, so that if anything does go wrong they can talk about it and figure out what is best for both the owner and the neighborhood.

Chairperson Hicks stated the next meeting will be held on June 26, 2024 and believes that this matter should be on that meeting agenda to have the applicant return and grant the variance requested with the stipulation that the owners continue to work with Code Enforcement and the neighbor to make this the best possible situation. It was noted the variance would expire in one

month, on June 23, 2024. Ms. Hicks did ask the applicant if any live music is booked between now and then which was confirmed – Yes, every weekend (Saturday and Sunday). Mr. Busse wants to make Mr. Shaw understand that if the short variance is approved and the Board decides not to renew the variance at the next Board meeting in June, there will be no music, even if there is a band booked. Applicant confirmed that he understood this position.

Motion by Hicks, seconded by Greenan, to approve live music on Fridays from 7 P.M. to 10 P.M., Saturdays from 7 P.M. to 10 P.M., and Sundays from 1 P.M. to 4 P.M. for the period of May 22 – June 23, 2024. 1)The applicant will appear before the Zoning Board on Wednesday, June 26, 2024, to revisit the variance and 2) The applicant will continue to work with Code Enforcement to improve the wall and finalize the design they will chose.

Mr. Shaw questioned if the meeting date was changed for any reason, do they have permission to talk with Mr. Busse for permission to keep going. The response was, no they do not.

Ayes: All

Noes: None

Motion Carried

SPR2023-10

Request of Anthony and Katie Almeida for renewal of a variance for property located at 60 East and West Road to allow chickens on property (raising of farm animals/poultry not permitted).

Mr. Almeida appeared and presented they currently have seven (7) chickens. They were original approved for six (6), however a fox got to five (5) of them. They replaced them with six (6) as that is how they are sold at Tractor Supply Store.

There have been no complaints to Code or the Police.

There were no neighbor comments or complaints.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method –No, this is being used as an educational learning experience for the kids. The chickens also lay eggs which are used for food; 2) Is this a unique circumstance –Yes, most people in Town do not have chickens and the applicant has significant area to accommodate the seven (7) hens; 3) Does the variance change the character of the neighborhood –No, it is indicated that there is a large lot and Mother-in-law is his neighbor and there are no complaints; 4) Is this a self-created hardship – Yes, it is not a determining factor.

Ms. Hicks remind the board, applicant and public that the Town Attorney’s Office is looking at changing the Town Code regarding these requests.

Motion by Tronolone, seconded by Greenan to close the public hearing and grant the variance for the raising of seven (7) hens at 60 East and West Road with the following conditions: 1) the applicant will appear before the Board at the May 2025 meeting or 2) if the variance is altered in the interim the applicant will be notified.

Ayes: All

Noes: None

Motion Carried

SPR2024-010

Request of Jeff Bybee for a variance for property located at 425 Meadow Drive to allow the conversion of garage to living space and allow parking in front yard setback (no parking in front setback).

Mr. Bybee was before the Board last month. Unfortunately, neighbor letters were not provided and the Board requested that he return with them to this meeting which were provided to Ms. Hicks.

The house currently has three bedrooms and Mr. Bybee would like to convert and use the garage as a fourth bedroom. The plan is to create another garage. The permit for that has been approved and it was noted that no variance was required. The specific variance is because the parking spaces will now be in front of the existing garage/new bedroom which is in the front yard setback. Currently as this was the driveway, they would like to eliminate the need to tear up the concrete and be able to park vehicles within that setback.

None of the five (5) neighbor letters provided show any objections.

No concerns or comments from the public or other residents.

It was clarified that this is an area variance. No other concerns or comments from the Board members.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the applicant has provided neighbor letters with no objection to the use of the driveway in front of the house for parking. 2) Is there an alternative to the variance – Yes, the Board could ask the resident to tear up the concrete in front of his house which would be cumbersome and expensive and would not be conducive to his living environment. 3) Is the request substantial – No, it is only affecting his house. 4) does the variance have an impact on the environment – No, should this project go forward any drainage issues will be addressed with Code Enforcement and the plans submitted will be addressed upon plan review. 5) Is this a self-created difficulty – Yes, but the Board appreciates the investment being put into his home, but it is not the determining factor.

Motion by Lang, seconded by Greenan to grant an area variance for the property located at 425 Meadow Drive to allow parking in the front yard setback (where no parking in front yard set back is allowed).

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS:

SPR2024-15

Request of Scott and Lauren Caruana for property located at 95 Greenspring Court for a variance to erect a 5’ fence in front/side and 40’ projection past house permitted (maximum 4’ height allowed in front yard and 10’ projection allowed).

Mrs. Caruana states that their property is located on a corner lot. They have small children and would like to have the fence put up for safety and privacy. She would like to have a picket style fence put up. According to the drawings provided a 3-foot buffer is being provided between the fence and the sidewalk.

Neighbor letters were provided from 56, 60, 68, and 99 Greenspring Court as well as 21 John Alex Drive showing no objections.

No comments from the public were received.

Mr. Bedient asked if the photo that was provided with a stone wall as well as the fence was in fact what will be installed. Applicant advised no that was a stock photo, however it will only be the fence. Ms. Greenan stated that according to the neighbor letters there is an undesirable change in the neighborhood and for the space that they are asking for, but she would not find that to be substantial.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the applicant has provided neighbor letters with no objection. 2) Is there an alternative to the variance – Yes, the Board could ask the resident to erect a 4-foot fence, but they are asking for the 5-foot for privacy and safety. 3) Is the request substantial – No. 4) does the variance have an impact on the environment – No. 5) Is this a self-created difficulty – Yes, but it is not the determining factor.

Corner lots are considered to have two (2) front yards which is why variances are needed as explained by Ms. Hicks. Two variances are requested and Mr. Stachowski, Deputy Town Attorney advises that these can both be approved at the same time, unless there is something substantially different between them.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant the variance for property located at 95 Greenspring Court to erect a 5' fence in front/side and 40' projection past house as requested.

Ayes: All

Noes: None

Motion Carried

SPR2024-16

Request of James Zern and Victoria Lachcik for property located at 240 Tudor Boulevard. for a variance to allow AC unit and Generator within 2.5 'side yard setback (units shall be 5' off the side property line)

Mr. Zern is asking for the variance as putting the generator five (5) feet off the side property line would cause it to be in their patio space as well as other projects that they plan to do to optimize their backyard space.

Ms. Greenan requested confirmation from Mr. Stachowski that this is an area variance, rather than a use variance.

Neighbor letters were received from the following: 234, 241, 244 (immediate neighbor), and 245 Tudor Blvd. were provided with signatures of the neighbors indicating no objection. Mr. Busse was asked if

he has been to the property – he has not but explains that because of the property line and where it is located, they only have about two and a half feet available.

No public comments or concerns were raised.

Ms. Hicks questioned if the generator was a primary source of power or more as a backup. Applicant confirms that it will be used as a backup should the power go out. Zenner and Ritter will do the installation of the generator.

Mr. Busse stated that the existing air conditioning unit can stay where it currently is, but when the time comes to replace it, if it is within the expiration for the variance approval, if approved, he would be able to move the AC unit to the side of the house. If outside the expiration, they would deal with it then, but suggest proceeding with the original request. The variance is valid for six (6) months.

Ms. Greenan questioned the alternative to this variance would be keeping the unit in the back of the house, however since there are plans for some remodeling that would increase the value and aesthetics of the property as explained by the Applicant.

Ms. Hicks advised that the Applicant is still required to get the proper permits from Code Enforcement for these projects, which the Applicant understood.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the applicant has provided neighbor letters with no objection. 2) Is there an alternative to the variance – No, it makes the most sense because of where the generator is, and the air conditioning will be on the same side. 3) Is the request substantial – No. 4) does the variance have an impact on the environment – No. 5) Is this a self-created difficulty – Yes, but it is not the determining factor.

Motion by Lang, seconded by Greenan to close the public hearing and grant two (2) variances to allow the air conditioner and the generator within two and a half feet of the side yard setback (where the units should be 5 feet off the side property line).

Ayes: All

Noes: None

Motion Carried

SPR2024-17

Request of Craig Cardwell/Agile Cold Storage for property located at 3200 Clinton Street for variance(s) to allow 1.) 11.6' front yard building set back variance (35' required) 2.) a parking lot side yard setback variance of 1.4' (10' required) and 3.) 21 parking spaces requested (199 spaces required).

Don Schoenl, President of Agile Cold Storage, and Co-Founder, Craig Cardwell were present and this is a construction of a modern cold storage building between Clinton Street and Empire Drive. This will support the local food manufacturers. The project is approximately \$60 million dollars. Once the project is complete there will be approximately forty-five (45) new permanent jobs. The project will take about fifteen (15) months to complete. There is a minimum building size and for this minimum size to fit on this minimum parcel of land they have tried to make the parameters work and this is the least disruptive.

Ms. Hicks questioned when they were before the Board last year the only variance they requested was the height variance. Applicants confirmed yes, that is correct and the height variance of seventy (70) feet was approved at that time. Ms. Hicks further reminded the applicant she asked if they had plans for any other variances which at that time was confirmed by Mr. Schoenl that no additional variances would be required. Which leads to Ms. Hicks wondering what has substantially changed besides general speaking to configure the building between then and now? These variances being requested are substantial and SEQR is not complete, from what is currently was stated by the Applicants. Mr. Schoenl states that SEQR is completed baring this final variance and will be submitted at the end of May 2024. He inquired how does this variance impact SEQR in any way – the determination of what and where things will go. Ms. Hicks in her opinion feels that this puts the Board in a bad position because they are required to look at all the environmental impacts, without having the benefits of seeing the SEQR report, they don't know what they are. They don't know if the parking lot impacts the environment. If the storm water retention pond needs to be underground. She asked what is the plan if the variance is not approved? In response to Ms. Hicks' comments Jessie Kamm states that their Civil Engineer has advised them that the SEQR application will not go through without these variances. It would not be looked at and would be rejected outright without them. It was advised to come and get approval for the variances to proceed with the SEQR. Regarding the storm water, it will be a combination of above and underground and includes the parcel of land up to the upper right hand and will have both underground detention and surface detention. Ms. Hicks asked that Mr. Kamm show them on the map where he is speaking about. What he showed on his laptop is not the final version. Ms. Hicks stated to the Board that when this was brought before them last year, they only saw a smaller version. The project has substantially changed since last year. Ms. Hicks asked if the Applicant was purchasing more land from Rosina's or who owns this land to the east of the building. The parcel in front will remain a parking lot. It is part of the entire project. Right now it is currently being used as truck parking. They do not need the large number of parking spaces. They only have a small office which will have four (4) or five (5) people working. If they were required to have more parking, they would use that parcel of land for additional parking. Ms. Hick's questioned if the variance is not granted, the spot marked on the map shown as additional parking would become impermeable and then be used for the required parking. The applicant confirmed then it will not be used for truck parking, but rather would be used for car parking. If the variance is granted to allow less space, then this will not be developed – it will be truck parking as it currently is being use. If the variances are approved for what they are looking for that whole area will be truck parking – it will not change and continue to be truck parking. The very big area on the map that Ms. Hicks circled will become truck parking. If this area needs to become additional parking they would go to other Rosina properties in the area for parking the trucks. Ms. Greenan questioned the meaning of this may be repurposed for automobile parking with the permission of Town of West Seneca and/or add additional car parking on the south side of the truck area. What does this look like in terms of permission from the Town of West Seneca – Mr. Busse said that is all sorted out within the planning board process. It was noted that certain lot does not extend towards Clinton Street. The parcel where trucks are currently parked is directly to the north of an auto shop and a flooring company in between a heavily wooded buffer. Applicant advised that they have letters submitted from all the adjacent property owners of acknowledgement in they are in support of this. Ms. Hicks asked for copies of the letters. In summary the area is currently a parking lot, and this business is asking to keep it as a parking lot but with the variance approvals as required. It is a truck parking lot today. The board questioned why this variance is necessary, and wondered why they did they not get it when it was built. The variance does not relate to the truck area that is being looked at. It really has nothing to do with what they are requesting. Because of the parcel size and the building

size, it requires them to have 199 parking spaces. Not in any relation to the area There will only be 45 workers covering 3 shifts and never more than 20 people per shift. They are requesting to lower the number of the required 199 parking spaces to 21 parking spaces. This would be for the new construction lot request. Mr. Kamm said if the Board came back and said they need to have 30 parking spaces, then they would have to find 10 parking spaces to move the trucks to and would have to have 2 parking areas for the trucks. They, as a business, do not need more than 21 parking spaces. Mr. Busse said that their request is fine with the Code Department and Plan review. It was noted that part of the reason a variance is required is because the business is absorbing that piece of property. They have the support of their neighboring properties and are asking to make this project viable. From the company's point of view this is a very small project, compared to what they usually do. Ms. Hicks' responded that from their point of view it is a very large project on a small parcel, and she feels that it is a big deal as there are environmental impacts. She has not seen SEQR to the state. She wondered the number of times have the Applicant was before the Planning Board and Applicant advised once, last September. Ms. Hicks stated that she does have the minutes for that meeting, and they had some substantial questions.

Ms. Hicks further mentioned that the Planning Board is the lead agency on the SEQR assessment. Generally, variances will be approved before applicants have their sight plan approval. Most area variances do not require SEQR review, they require type 2, which does make them subject to SEQR review. The plan is subject to SEQR review, even if the variance is approved at this meeting, they still must go before the Planning Board for site plan approval. Mr. Kamm states that when they are finished the site will be better than it currently sits today and will include the parking lot area as well.

After pulling up the arial view of the parcel Ms. Hicks now has a better understanding of the delineation. There will a be a driveway from west side of Clinton Street. The current topography looks to be about 2-3 feet higher than the grade of Rosina or the neighbors. The plan is to remediate everything down to grade. The soil will be taken out and brought back in as clean soil. There is a state law to consider SEQR when making their determination even if they are not the lead agency. The SEQR is something that should be looked at and the Board does not have it. Ms. Hicks inquired if the Army Corps or Engineers or the DEC gotten back to the Applicants or have an opinion on the project. The DEC would accept this remediation as previous stated. Ms. Hicks states that she has not seen anything from the DEC or the Army Corps of Engineers but has gotten many letters from other agencies that are interested about the project. DEC has accepted their project and they have sent in their \$50,000 application fee and are just waiting for the DEC to give them the signature to start remediation.

This site has been determined to be a contaminated site by the NYSDEC and therefore considered a Brownfield site. The DEC encourages companies to clean up these types of sites and make them uncontaminated and reusable again. The company is going through the DEC process. When this was placed before the Board last year, the Planning Board was identified as the lead agency. At that time the Planning Board did reach out to the state agencies. They will not get final SEQR approval until the Planning Board makes their decision in one way or another. Getting a SEQR approval costs a lot of money which is why the applicant is wanting to get the variance approval so that they can finalize the plans and get the final SEQR approval.

The letters provided were all from businesses, there were no residential letters provided. A very detailed letter from May 17, 2024 was provided, by the applicant, to the neighboring properties – WS Empire

LLC signed by Matt Neil, B & K of Buffalo Inc. located at 150 Empire Drive signed by Brian Hamner, 145 Empire Drive Inc. signed by Daniel E. Ronan CFO, 3100 Clinton LLC signed by Randy Bernick Vice President of Finance and Administration, 130 Empire LLC signed by Randy Bernick Vice President of Finance and Administration, 3220 Clinton Street signed by Tim Kropovitch. No objections were given.

Ms. Greenan believes that the SEQR request will be addressed at the Planning Board, it is more of a question of would this item be tabled or not. She felt that one item that needs to be considered is the impact on the environment but does not necessarily need to wait until SEQR. What would be an alternative if the variance was not granted. The parking variance could be mitigated by shifting truck parking away and making it a parking area for cars. The other variances are a bit problematic – shrinking the building itself, probably would not be feasible, making it a possibility that they may not be able to complete the \$60 Million project as it would be too small for them to justify it. Ms. Hicks wanted to confirm there are 3 variances requested – the building setback at the north property side along Empire Drive (Town requires a 35-foot setback, requesting 11.6 feet). The side yard setback is being asked to change to 1.4 feet from 10 feet is required. This is a substantial difference that runs the length of the building. Ms. Greenan questioned if the parking variance has an alternative, but the other two variances have no other alternative – yes, that is correct. Mr. Busse stated the setback issue is on the other side of the existing truck parking lot. Mr. Lang questioned the three variances that are being sought have nothing to do with the north parcel which was confirmed as correct, nothing to do with the north parcel.

No public comments or concerns.

The building setback in Section 120-31C where the Town Code requires the front yard setback at the north property line along Empire Drive of 35-feet and the applicant would provide 11.6 feet, resulting in a 23.4-foot variance.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, according to the understanding of the property and any of the areas that will be impacted are commercial. 2) Is there an alternative to the variance – No. The alternative would be to make the building smaller, which would have to make the project not proceed forward. 3) Is the request substantial – No, if it was considered a back yard a variance would not be needed. 4) does the variance have an impact on the environment – Ms. Hicks is not able to answer this as she has not seen any documentation regarding any type of environmental impact. According to the applicant they have been following the requirements of the NYSDEC on the project as it already is a Brownfield and will be improved with the building of this project. 5) Is this a self-created difficulty – Yes, but it is not the determining factor.

Motion by Lang, seconded by Greenan, to close the public hearing to grant the variance of the front yard setback on the north property line along Empire Drive reducing it from 35 feet to 11.6 feet.

Ayes: All

Noes: None

Motion Carried

The parking lot setbacks are 10 feet on all sides and the applicant is looking at 1.4 feet from the west property line to the edge of the pavement resulting in an 8.6-foot variance.

Clarification to confirm that this will all taken care of with Engineering and Code Enforcement because of the drainage. For the applicant to move forward with their plans they will need to know that the Board would approve the setback variance, which is along the driveway adjacent to the Rosina Plant driveway. If approved, they will be submitting the documents to Code Enforcement and Engineering Departments. If anything needs to be required differently, it will be addressed at the planning review. They would be aware that this number was approved. All the factors that are being talked about are still going to go before the Planning Board for final SEQR determination, whether positive or negative.

Looking at the parking lot setbacks, the Town Code requires a setback of 10 feet on the side yards. The project is 1.4 feet from the west property line to the edge of the pavement, resulting in the request for an 8.6-foot relief from the Town code of 10 Feet.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the neighbors have expressed no objection regarding the setback reduction for the driveway. 2) Is there an alternative to the variance – No, the reduction is needed to make the project work. This project is still subject to SEQR, and any impacts are going to be considered during the coordinated review process. 3) Is the request substantial – Yes but considering where this is in relation to the Rosina building, and they are the only neighboring parcel that is being affected by it and have no issues about this. This will go before the Planning Board, Engineering and out for coordinated review even though it is substantial it is reasonable based on the project. 4) Does the variance have an impact on the environment – cannot be determined as the Board does not have enough information regarding it. This will be going out for coordinated review and will be addressed by the Planning Board in totality of the project. 5) Is this a self-created difficulty – Yes, the applicant has stressed that this is needed for their project to work.

Motion by Tronolone, seconded by Bedient, to close the public hearing and grant the variance for the parking lot set back. Moving it from a 10-foot required to 1.4 feet on the west property line at the edge of the pavement.

Ayes: All

Noes: None

Motion Carried

Looking at the required off-street parking of Section 120-41D the Town has calculated there is a need for 199 parking spaces based on the size of the building, which would be correct if there were inhabitants or if it was a business part. The fact that this is cold storage, and it has been indicated that there will be 50 jobs created and this will be shift work, not all of those people will be in the building at any given time indicates the request is not substantial.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the applicant has provided letters of no objection to the project. 2) Is there an alternative to the variance – Yes, but it would require the need to build, provide or pay for parking elsewhere which could then include the additional expense of additional trucks needed. 3) Is the request substantial – Yes, according to the Town Code the request is very substantial, but the description of the project and what the building is going to be the request is in line with the factors that have been described. 4) Does the variance have an impact on the environment – No. 5) Is this a self-created difficulty – No, it is a Town Law, the applicant did not create it.

Motion by Lane, seconded by Tronolone, to close the public hearing and grant the variance regarding the required off street parking from 199 parking spaces required to 21 parking spaces that is requested, resulting in a decrease of 178 spaces and that this property, already developed for a parking lot will be used in conjunction with truck parking.

Ayes: All

Noes: None

Motion Carried

SPR2024-18

Request of Benderson Development Company, LLC for property located at 2303 Union Road for a variance of the installation of a monument sign with 98.86 sq ft of a sign installation (maximum 32 sq ft allowed).

Applicant submitted request to table until June 26,2024 meeting.

Motion by Tronolone, seconded by Bedient, to table the request of Benderson Development located at 2303 Union Road for a variance of the installation of a monument sign with 98.86 sq ft of a sign installation (maximum 32 sq ft allowed) until the June meeting, at the request of the applicant, and Town Clerk Newton to send a letter to the applicant.

Ayes: All

Noes: None

Motion Carried

SPR2024-19

Request of Chris Chapman and Brooke Chapman for property located at 10 Morris Crescent for a variance to allow 30' fence projection (maximum 10' allowed).

Chris Chapman of 10 Morris Crescent is requesting a variance to install a 30-foot split rail fence with a 30-foot projection from the front of the house to the corner of his property line. This is all to increase the property value. The fence will be no higher than 4 feet. The fence will extend from the neighbor's chain link fence to a decorative rock in his front yard and will end 12 feet before the sidewalk. Other improvements will be made to the property including a decorative sculpture, flagpole and some additional landscaping. The split rail fence would make his property more aesthetically pleasing and matches the house. A question was asked as to how far off the property line will the fence be. There is no official setback requirement in the Town of West Seneca regarding fence placement. It can go all the way to the property, but it is the responsibility of the homeowner to be aware of the property line location. A stock photo of what the fence will look like was provided as well as a picture of where the fence will be located.

Mr. Chapman was only able to get 5 neighbors' signatures. He does not speak to the neighbor to his immediate left (looking at the house). There have been problems with them in the past. Code Enforcement has advised him to send a letter of their intent notifying them they were going to be appearing before the Board at this time and if they had any objections or questions to show up. Ms. Hicks inquired if the person on the left is the one immediately affected which was confirmed – yes. Letters of no objection were received from 3, 7, 8 and 11 Morris Crescent and 94 Tim Tam Terrace. A letter was sent to 14 Morris Crescent informing them of the variance request. After looking at the photos of the property, Ms. Hicks inquired if the rock there when the property was purchased which

the Applicant confirmed – yes. She further inquired if the applicant knows who owns the rock. Applicant advised that it is located in the center of the property lines.

A letter was received from Amy and Tom Havers, owners of 14 Morris Crescent via email to Mr. Busse and was asked to relay a message to the Board saying that she was not able to attend the meeting because of work. The letter states some concerns to the fence variance being requested.

1. The fence would be the only front yard fence in the neighborhood – it would be the only house in the newer section with a split rail fence, there are some in the older section.
2. How would this affect the property value to have a separate section – historically speaking they have never heard of an improvement to a property decreasing the value of the property. If it's well done, it would increase the value of the property.
3. They do not want any holes dug directly on their line between the fence and the rock, as it would be partly dug on their property – this has been acknowledged and Mr. Chapman agrees to back off the property line as not to encroach on the neighbor's property.
4. The concern for shrubbery located on the line is that the roots will extend more than 8 inches as stated and could interfere with future development on their side yard – the plants will be planted by the posts only inside the fence.

Ms. Greenan wanted to confirm the reason for the fence was only for aesthetics – yes and when he walks out of his house, he sees the camper, which he knows isn't permanent. Applicant is just trying to make his house look better and increase his property value. For the shrubbery the intent is to put it on his side of the fence, mainly in front of the posts. Applicant has confirmed with Code Enforcement and understands they are limited to a 2-foot height without needing a variance. As a result of the neighbor's concern of encroachment on the property line Ms. Hicks states that she would like to see the fence line come in 10-12 inches off the property line, so there are no arguments with the neighbors regarding encroachment. The Town does not have a surveyor and Code Enforcement can only go off what a survey indicates. Surveys can also change from time to time. Mr. Busse cannot always be on sight when a fence is installed and only can base his determination off a survey that is provided to his office. There are times when neighboring surveys differ as well. Mr. Chapman has no problem coming back a foot off the property line.

Ms. Greenan states that she is not convinced that this will not create an undesirable change in the neighborhood, based on the fact that there are not any other fences like that in the neighborhood and the immediate neighbor shares the concern. She wondered how far off the street is the rock. Applicant advised it is more than 3 feet. Mr. Lang states it is a change in the neighborhood, not necessarily undesirable change, but it is different.

There is a neighbor dispute that already exists between the Chapmans at 10 Morris Crescent and the Havers at 14 Morris Crescent.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, it does change the character of the neighborhood, but it is not undesirable. 2) Is there an alternative to the variance – Yes, the fence is not built which would result in not increasing property value of have the visual benefit. 3) Is the request substantial – No 4) does the variance have

an impact on the environment - No .5) Is this a self-created difficulty – Yes, but it is not a determining factor.

No public comments.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant the variance of Chris Chapman and Brooke Chapman for the variance to allow a split rail fence projecting into their front yard where a maximum of 10 feet is allowed.

Ayes: All

Noes: None

Motion Carried

SPR2024-20

Request of David Paryz for property located at 4306 Clinton Street for a variance to erect a 6’ fence in front/side (maximum 4’ height allowed in front/side yard).

David Paryz is looking to install a 6-foot fence from the neighbor’s 6-foot fence to the corner of his garage. This fence is for privacy as well as safety for the daughter and dog. The fence that needs approval is the small section in the front of the house. Ms. Hicks as if the entire yard fenced. Applicant advised not yet, they are closing off the back corner, but do not need a variance for that.

Neighbor letters from 4287, 4300, 4303 and 4316 Clinton Street and 24 Broadway have no objections to the building of the fence in the front yard setback.

No public comments

No comments or concerns from the Board members.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, he has letters of no objection from his neighbors. 2) Is there an alternative to the variance – Yes, the fence could only be 4 feet high. 3) Is the request substantial – No, the 4-foot fence would be allowed. 4) Does the variance have an impact on the environment - No .5) Is this a self-created difficulty – Yes, but it is not a determining factor.

Motion by Tronolone, seconded by Bedient, to close the public hearing and grant the variance at 4306 Clinton Street of a 6-foot fence in the front/side yard.

Ayes: All

Noes: None

Motion Carried

SPR2024-21

Request of Ricardo Ventura for a property located at 99 Greenspring Court for a variance to erect a 6’ fence in front/side yard (maximum 4’ height allowed in front/side yard).

Ricardo Ventura is looking to install a 6-foot fence to go along with the rest of the fence that is put up. What is the time frame – this summer. He is currently waiting for Marano to grade his yard so he can put grass and the fence in.

Letters from 68, 72, 76, 95 and 103 Greenspring with no objection were submitted.

No comments from the residents.

No comments of concerns from the Board members.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, he has letters of no objection from his neighbors. 2) Is there an alternative to the variance – Yes, the fence could only be 4 feet high, but the 6 foot is needed to match the neighbors and to provide safety for his family. 3) Is the request substantial – No, it is in line with what is going on in his neighborhood. 4) Does the variance have an impact on the environment - No .5) Is this a self-created difficulty – Yes, but it is not a determining factor

Motion by Tronolone, seconded by Lang, to close the public hearing and grant the variance at 99 Greenspring Court to erect the 6-foot privacy fence in the front/side yard.

Ayes: All

Noes: None

Motion Carried

SPF2024-22

Request of Isabel and Paul Komornicki for property located at 105 North Avenue for a variance to allow raising of (2) goats, chickens and ducks on property (raising of farm animals/poultry not permitted).

According to a letter from Mr. Komornicki's sister they were not planning to be present for this meeting, therefore the neighbors were told this was going to be tabled until the June meeting. Mr. Komornicki was present, however Ms. Hicks is unsure if they should proceed. In theory if the neighbors are all in support, Mr. Stachowski doesn't see why not. Mr. Komornicki stated that neighbors who are against it are about 10 houses away.

Ms. Hicks would still like to hear from Mr. Komornicki but would like to table the variance until next month, with no impact to him at this time. At the next meeting, if there is still an objection they can deal with them then, which Mr. Komornicki agreed to.

Mr. Komornicki states that the letter was written by his sister, as he is a disabled veteran, has PTSD as well as being a patient at Roswell. The goats (Ozzy and Harriet) help him get up and about, instead of laying in bed all day. Kids from the neighborhood and grandparents bring their grandkids to see them. He does not want the ducks any longer but would like the goats and a couple of chickens. He can give the chickens away if it is going to be an issue. He has a shed he turned into a goat house, and it is fenced off. The goats do not have free roam. They stay within the fenced area. There is no way for the goats to get out and escape. Applicant states he has GPS on both goats that will sound an alarm if they leave the property. To clarify, he would like to keep the 2 Nigerian Dwarf goats and 2 chickens.

Letters were provided from 114 and 117 North Avenue, 55, 62, 65, and 75 Inter Drive with no objections. Letters and certifications from Dr. Gene Feldman at 4818 Eckhardt Road, Hamburg stating that she has treated Ozzy and Harriet. Both have gotten their vaccines for overeating and tetanus and

have both been vaccinated for rabies, and Ozzy is not an intact male. A letter from Anthony Rine of 117 North Avenue states that he has no problem with the chickens, goats and ducks that are proposed if it doesn't infringe on his property.

There have not been any complaints for an approved variance for a goat and some chickens were just approved for a residence on Reserve Road.

Ms. Hicks inquired if there have been any complaints, objections or police issues with people that currently have these animals on their property. Code Enforcement's only phone calls that were received were from about a month ago inquiring if these types of animals were allowed in Town. Possibly the same person that contacted Ms. Hicks and she indicated this was going to be tabled as the Applicant was not going to appear as they were going to be out of town.

According to Town law there are no farm animals allowed on residential lots. The Board has approved mostly chickens. There has been only a handful of times have they ever had any true complaints or problems at all. They are required to come back every single year to be reevaluated. Ms. Hicks inquired how long has the Applicant had these animals, which he confirmed since about 2023.

The balancing test will be conducted at the next meeting in June. Ms. Hicks went over it just so Mr. Komornicki can be familiar with the questions they need to answer.

Can a reasonable return be achieved by another method –in this instance he is asking for 2 chickens and 2 goats. If this is approved, they will not allow more than that and they will not be allowing any other animals. Can still have a dog or cat or anything that is normally allowed, but no more poultry or farm animals allowed.

Is this a unique circumstance –Yes, because it pertains to livestock which pertains to goats. They are not considered food, just pets.

Does the variance change the character of the neighborhood – he has letters of no objection from his neighbors. There may be some people who may or may not object but will find out at the next meeting.

Is this a self-created hardship – Yes, it is not a determining factor. And, to the fact that Mr. Komornicki is a veteran and is recovering from some health issues. The goats provide some companionship and give him a sense of purpose.

Other than a few questions that Code has received, no substantial complaints have been received.

Mr. Komornicki is to return before the board at the next meeting in June and Town Clerk Newton will send a reminder letter regarding the meeting next month.

Motion by Greenan, seconded by Tronolone to table this hearing until the June 2024 meeting.

Ayes: All

Noes: None

Motion Carried

SPF2024-23

Request of Laura Conklin for property located at 57 Wedgewood Drive for a variance to erect a 6' fence in front/side yard and 27' projection past house permitted (maximum 4' height allowed in front yard and 10' projection allowed).

Laura Conklin of 57 Wedgewood Drive lives on a corner lot. She is looking to build a 6-foot fence with a 27-foot projection for privacy and safety of her children. 27 feet is from where the garage ends and the 3 feet to the sidewalk (on East Bihrwood). From the Boards perspective, she has 2 front lots. The corner of the proposed fence will abut the neighbor's existing fence.

Letters from 55 Wedgewood, 36, 39 and 43 E. Bihrwood with no objection were submitted.

No comments from the public were received.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, she has letters of no objection from her neighbors, and this is not unusual for the neighborhood. 2) Is there an alternative to the variance – Yes, the fence could only be 4 feet high, but the 6 foot is requested to provide safety and privacy for her family. 3) Is the request substantial – No, it is primarily a residential neighborhood and similar to what other neighbors currently have. 4) does the variance have an impact on the environment - No .5) Is this a self-created difficulty – Yes, but it is not a determining factor

Motion by Bedient, seconded by Greenan, to close the public hearing and grant the variance for the property at 57 Wedgewood Drive to allow the 6-foot privacy fence in the front/side yard with the 27-foot projection past the house, noting this is on a side lot which is considered to have two front yards.

Ayes: All

Noes: None

Motion Carried

SPF2024-24

Request of John and Mary Nayda for a property located at 157 Century Drive for a variance to erect a 6' fence in front/side yard (maximum 4' height allowed in front/side yard).

Applicants submitted a request to table until the June meeting as they are out of town.

Motion by Tronolone, seconded by Greenan, to table until the June 26, 2024 meeting.

SPF2024-25

Request of Jessica Dueringer for property located at 257 Barnsdale Avenue for a variance to allow raising one (1) pig on property (raising of farm animals/poultry not permitted).

Ms. Dueringer is not present for the meeting. She is currently working with the Town's legal department for documentation of her pig.

Motion by Tronolone, seconded by Lang, to table this meeting until the June 26, 2024 meeting.

FOR DISCUSSION:

The mailing of the minutes to the Board members:

Ms. Hicks prefers to receive her meeting agenda packet by mail, even if it is expensive, it is difficult for her to get to the Town Hall during business hours to pick it up. Ms. Hicks prefers to have a paper copy in hand. Will accept both hard copy and email.

Mr. Bedient questioned if they get the minutes via email – they currently do not, but that can certainly happen.

Just a reminder to the Board members that they are required to do 4 hours of continuing training every year and the certificates of training should be sent to Ms. Hicks as well as Town Clerk Newton.

Ms. Newton suggests having the letters that are requested from the applicant ahead of time so that they can be viewed before the meeting. This would also make sense for any documentation that will be presented. This will give more time to look things over more closely. If possible, this would be a great thing to have in hand.

Motion by Tronolone, seconded by Lang, to adjourn the meeting at 9:06 P.M.

Ayes: All

Noes: None

Motion Carried