

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

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

Ayes: All Noes: None Motion: Carried

Motion by Lang, seconded by Hicks, that the proofs of publication be accepted.

A publication correction was announced for SPR2024-32. The address should be 48 Greenbranch for the variance of a front porch and a sidewalk. All the neighbor signatures have been received. The error was noticed and updated on the website as well as posted outside of the Clerk's office.

Ayes: All Noes: None Motion: Carried

Motion by Tronolone, seconded by Lang, to approve meeting minutes #2024-04 of April 24, 2024.

Ayes: All Noes: None Motion: Carried

Motion by Greenan, seconded by Tronolone, to approve the meeting minutes #2024-05 of May 22, 2024.

Ayes: All

Noes: None

Motion: Carried

OLD BUSINESS:

SPR2024-22

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

Isabel Komornicki, sister of Paul Komornicki, is the property owner of 105 North Avenue where Paul is the tenant. Paul has two pygmy goats and a few chickens. He no longer has the ducks. The goats are housed in a small enclosure, and both goats have GPS tracking devices on them. The goats are used as comfort pets, for her brother, who is a disabled veteran.

Ms. Hicks stated Mr. Komornicki did a nice job explaining the situation when he was before the Board last month. He was not expected to be at the meeting today, which is why it was tabled. He did present his petition to the Board and the minutes have been online for the public to see for the past three weeks. Ms. Hicks questioned if anything had changed since the last meeting, to which Mr. Komornicki replied the ducks are now gone. Mr. Busse confirmed the plan was to get rid of the ducks and the plan is to just have the goats and chickens on the property. Ms. Hicks questioned how many chickens Mr. Komornicki had along with the two goats. Mr. Komornicki replied he has four chickens. Ms. Hicks questioned if the chickens were all hens and not roosters, this was confirmed correct by Mr. Komornicki.

No complaints or police reports have been made regarding the animals.

There were no comments or concerns made by the public.

Ms. Greenan stated they essentially went over the balancing test at the last meeting and questioned whether they need to cover anything else. Mr. Stachowski was asked if there was anything from a legal standpoint, to which he responded he understands that this is continuation of the last meeting, and he believes the Board was waiting to see if a neighbor was going to come today as they were unable to come for the last meeting. Mr. Stachowski suggests finishing the balancing test and then voting on the application. Mr. Lang commented in the May meeting minutes it states the balancing test will be conducted in the June meeting.

Ms. Hicks stated this request will be considered under a use variance, as they have been doing with all the chicken requests previously. Ms. Hicks does recognize that this balancing test is not ideal, but it is the best they have right now. The Town is working on some potential changes to the zoning code regarding owning chickens.

Chairperson Hicks utilized the use variance balancing test:

1) Can a reasonable return be achieved by another method – Ms. Hicks states her opinion is no, the petitioner already has these animals and they have not been an issue, nor have there been any complaints; 2) Is this a unique circumstance – yes, the petitioner does not have any complaints against him. According to Mr. Komornicki's photographs and testimony these animals are used as companion animals. Ms. Hicks questioned if Mr. Komornicki lives by himself – he does; 3) Does the variance change the character of the neighborhood – no. Neighbor letters were provided to the Board at the last meeting. Ms. Hicks questioned if the neighbor that was concerned about Mr. Komornicki keeping his animals on his own yard was present at the meeting – he was not. Ms. Hicks questioned if any distain or complaint was given by Mr. Komornicki's neighbor – he has not; 4) Is this a self-created hardship - yes, but this is not the determining factor.

No comments were made by the Board.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant a 1-year variance to allow the raising of two pygmy goats and four hens on the property located at 105 North Avenue. The petitioner will appear before the Board in June 2025. Mr. Komornicki cannot have more than four chickens. If one passes, he may replace it.

Ayes: All

Noes: None

Motion: Carried

SPR2021-11

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).

Mr. Richlmayr stated he is withdrawing the request for the variance as they no longer have chickens. Ms. Hicks questioned if any action needed to be taken, to which Mr. Stachowski replied that the 1-year variance was probably up so no action is required at this time. Mr. Busse added if Mr. Richlmayr plans to have any chickens in the future he will need to start over with the application from the beginning – Mr. Richlmayr stated he understands and will re-apply if necessary.

SPR2023-5

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, with Buffalo Creek Bar and Grill, was present. Ms. Hicks questioned how things have been going. Mr. Shaw said things have been going well and noted that another layer of soundproofing (acoustic diffuser) had been added. This layer is decorative. Mr. Shaw presented the Board with all the specifications and pictures of what was done with the walls. Ms. Hicks stated that she asked Mr. Shaw to bring this information to the next Board meeting so they could talk about soundproofing. At the last meeting Mr. Lang did some calculations (as a registered Architect) to assist the Board in understanding the degree to which the sound would be absorbed by the wall that was currently installed. Ms. Hicks questioned if this was an addition to the wall, to which Mr. Shaw responded yes, it is a decorative sound absorbing material on the inside of the wall. The soundproof material used inside the wall is a Thermafiber and sound guard plus mineral wool insulation batting. Another picture shows what looks like board and batten is the decorative inside wall. Mr. Hicks questioned if this wall is facing Borden Road, to which Mr. Shaw responded that is correct. Pictures of the work were provided to the Board.

The use variance balancing test was already completed at the May meeting when music was approved on Fridays from 7-10 P.M., Saturdays from 7-10 P.M., and Sundays from 1-4 P.M. Mr. Busse stated there have been no complaints made to the Police Department or Code Enforcement office. Ms. Hicks questioned if the Board had any questions or comments, to which Mr. Lang stated he was looking for the technical data that shows what the impact is to the wall. Currently, he is not seeing the data but notes that it is advertised as an acoustic deadening product. Ms. Hicks questions if this is an industry standard piece of equipment that is commonly used to which Mr. Shaw agreed and stated the reason, they used it was because it was aesthetically pleasing as well.

Mr. Shaw was asked if he knew that the neighbors were still sending letters regarding this matter – he is not aware of the letters sent. Ms. Hicks said that she would read the letters that were sent. Ms. Hicks asked Mr. Shaw if he thought there was anything that needed to be changed, from his perspective, and if the current request for Fridays and Saturdays 7-10 P.M. and Sundays 1-4 P.M. were still what he was requesting. Mr. Shaw does not see any changes that need to be made and is still requesting the current days and times.

Mr. Bystrak, of 4721 Clinton Street, stated he is directly across the street from the bar and is the closest neighbor to the Buffalo Creek Bar and Grill. Mr. Bystrak read the letter

sent to the Board stating this is the fifth time he has expressed his opposition to the playing of live music outside the bar. The live outside music is a quality-of-life issue and there is live music prohibited on the books because of this. Peace and quiet are highly valued by all. He does acknowledge that the music volume has been better this month and most of the bands have maintained a reasonably tolerable level of music the entire night. There have been a few times that he has noticed the music getting louder for a short period of time and then goes back down. Mr. Bystrak is confused by this and would appreciate the music staying at the level that was agreed upon. Mr. Bystrak does acknowledge that the live music ended a few minutes early and expresses his gratitude. Mr. Bystrak asks that the Zoning Board impose a designated live music season of June – September only, and the live music variance request be reviewed monthly to ensure the bar is honoring their commitments and operating in the best interests of the neighborhood. Mr. Bystrak states he is willing to compromise if Buffalo Creek Bar and Grill honors their commitments. He will live with the live music, even though he does not approve of it.

Ms. Hicks questioned why Mr. Bystrak felt the need to include the Town Board in this matter, to which he responded it was to make them aware of the situation in the Town. Ms. Hicks then questioned if he wanted them to act on this matter in some way. Mr. Bystrak responded he did not expect them to act but wanted to make them aware in case of any further issues. Ms. Hicks questioned what was meant by further issues and what he is looking for? Mr. Bystrak replied he stated that he can live with the music but would like his recommendations implemented. Ms. Hicks stated Mr. Bystrak's letters and actions are contradictory. The Town has a live music prohibition and the only remedy a bar owner has would be to be granted a variance from the Zoning Board of Appeals, which are generally approved with some modifications and compromises from both parties (neighbors who are effected and the bar owner). Ms. Hicks states the Board has been very strict in asking the bar to provide documentation of loss of revenue when they do not have music, which is required by law on the use variance. Mr. Shaw has given the Board his Point-of-Sale documentation showing their numbers for when they have music versus when they do not. The numbers provided to the Board were from 2023. At this time the Board will not request new numbers but may do so in the future. These numbers do show a financial hardship when there is no music.

Ms. Hicks further explained the Town Board does not legally have any jurisdiction over how the Zoning Board acts, with the exception to appoint or not appoint the members of the Board on a rotating basis. Each January one member is replaced, after they have served their 5-year term. There are 5 Board members so that each applicant is treated fairly, the

neighboring residents are treated fairly, and they act in the best interests of the Town. Because Mr. Bystrak wrote to the Town Board members one Councilmember responded. Ms. Hicks now feels that response should be made part of the official record.

The email response from Councilmember Piekarec dated May 24, 2024. Councilmember Piekarec thanked Mr. Bystrak for contacting him about this issue. Mr. Piekarec agreed that the Town does not currently permit live music but explains that under State Law every Town is mandated to have a Zoning Board of Appeals. The Zoning Board panel makes rulings on use and site variances. Mr. Piekarec states the Town Board does not vote on these matters, but in his opinion, the Zoning Board should deny this variance request if a compromise cannot be worked out before the June meeting. Mr. Piekarec suggests diligently taking notes on the issues occurring as well as contacting the West Seneca Police Department and filing a report any time the 11 P.M. He further stated the Town Noise ordinance is being violated. Mr. Piekarec did state in the email that these thoughts are his alone and he is not speaking for any other person that is in the email.

Ms. Hicks states that in her opinion the Town Board should not be influencing the Zoning Board in any way. Ms. Hicks questioned if Mr. Bystrak would be opposed to the continuation of the variance for one month, to which Mr. Bystrak said he would not be opposed. Ms. Hicks states that there is no such thing as a music season unless the Town Board creates this and if that happens it would indicate that the Town would then allow live music. Mr. Bystrak stated because this is a variance, and certain restrictions are already being imposed he thought the Board could impose these rules if they deemed it necessary or thought it was a good idea. Ms. Hicks states this is where she has an issue. The business is only going to be able to have live music outside as the weather permits them to do so. Ms. Hicks asked Mr. Bystrak if live music was permitted indoors and would that effect you, to which Mr. Bystrak responded he was never aware that there was live music indoors and it has never bothered him if this was already happening. Ms. Hicks questioned if Mr. Bystrak was saying that he doesn't want outdoor music for the months of October – May. Mr. Bystrak confirmed this is correct, that is what he is requesting. The request for a music season will need to be discussed between the Board members.

Dale Kling, of 4760 Clinton Street, stated he agrees with Mr. Bystrak that the Buffalo Creek Bar and Grill have been very good neighbors. Things have been quieter this summer. He appreciates the effort with the acoustics by putting in the wall to help make the area soundproof. Mr. Kling understands the live outdoor music is a band, but asks if music is played at the bar and the stereo gets louder as the night goes on, is that considered live music or is that to be shut off at 11 P.M.? Mr. Busse states that the music should be shut off at that time. Things like recorded music, sound systems, radio systems are permitted, however, there is a noise ordinance for these things, and it

drops drastically at 11 P.M. These noise issues are something the Police would handle if things continued to be extremely loud or exceeding that ordinance. Mr. Kling asked if Mr. Shaw got a permit for the sign advertising beer that was put up to cover the plywood wall. Mr. Busse stated they are aware of the sign and it does not need a permit for signage at a property for advertisement of a product. This is a unique situation and Mr. Busse would be happy to have a conversation with his department head as well as the Town Board regarding how they would want to proceed, if a permit is necessary, or what would be permitted for the temporary wall used to deflect the music. Mr. Kling is not trying to be difficult but explains that it seems as though things are being put up in spite. He reiterated that over all the owners of the Buffalo Creek Bar and Grill have been very good neighbors and he has no complaints.

Ms. Hicks asks Mr. Shaw to explain the composition of the material that is on the outside of the wall. Mr. Shaw stated that he is not sure and questioned what the specs said. Mr. Shaw questioned if Ms. Hicks was referring to the outside, her response was yes, the IPA sign a sign advertising alcoholic beverage (Beer). Mr. Shaw stated that the sign was made by the distributor for the bar and is mostly for aesthetics. Mr. Busse stated that he does not believe this is not anything that will be decided on tonight. That will be a discussion for Mr. Busse and his department to see what is allowed.

Ms. Hicks confirmed and clarified the meeting today is about the renewal of the variance for live music at 4717 Clinton Street on Fridays 7-10 P.M., Saturdays 7-10 P.M. and Sundays 1-4 P.M. Ms. Greenan asked Mr. Shaw if he planned to have music after September. Mr. Shaw replied yes, weather dependent and further explained the reason for the dates of May 1 – October 31 are the dates that coincide with the liquor license for the patio bar.

Ms. Greenan states she is comfortable granting the variance through September with Mr. Shaw returning to the September meeting and questioned what the rest of the Board's thoughts were. Ms. Hicks thinks that is too long and believes they should have them come back in August and grant them a 60-day variance. The residents are asking for 30 days and believes 120 days is a bit too long. Ms. Greenan says she is okay with them coming back in August. Mr. Lang suggested the Board grant the variance until October, with a review in August, as it may take some time to book acts for the business. Ms. Hicks questioned Mr. Shaw about the bookings, and he replied that they are booked through October and added the acts are aware that if they are denied the variance they will be done. Ms. Hicks still wants to be sensitive to the neighbors and the issues between them. Ms. Hicks questioned Mr. Busse about his thoughts on the matter. Mr. Busse stated that since it is his office that gets the phone calls and complaints, he would be okay with July or August and validates the neighbor's concern. Mr. Stachowski also confirmed to go to August and then review again for October.

Ms. Hicks stated they have already done the balancing test and will not need to complete it again. Mr. Stachowski agreed and suggested Ms. Hicks refer to the rationale used in the previous balancing test as for the reasoning one way or another. Ms. Hicks referred to the balancing test from the May meeting.

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, 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.

Motion by Greenan, seconded by Tronolone, to close the public hearing and grant the variance for live music from this time until the August 2024 meeting. Music is permitted on Fridays 7-10 P.M., Saturdays 7-10 P.M., and Sundays 1-4 P.M.

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).

Matthew Oates, on behalf of Benderson Development Company, was present requesting an area variance for a new free-standing sign at the Union Road entrance for the Garden Village Park project. A drawing, on an easel, was used for this project's presentation. This is a redevelopment project that has been going on for the past few years. This is a unique project, as a majority of the project is in Cheektowaga, but the entrance and sign are both in West Seneca. This project consists of 350,000 square feet of space over 3 buildings. The project will be replacing two old sign structures that are also on this property, the existing structure that is in the landscaping island at the entrance, and a second one further down Union Road (reference to the drawing). Even though the sign is bigger than the Code allows, the sign being requested is consistent with the signage that is in the immediate area such as the Arby's, Olive Branch and Save A Lot. Ms. Hicks questioned where the Save A Lot sign was. Mr. Oates pointed to the drawing, saying it was inset onto their property.

Ms. Hicks questioned if the tall white A frame sign in front of the leasing sign would be removed. Mr. Oates replied, yes, the large pole is going to be removed and will replace

the old sign with the new one, as well as the other one further down Union Road, which is in Cheektowaga. The sign being spoken about is the 3-post vacant sign that is located at the entrance in West Seneca. Ms. Hicks questioned if the sign being requested is closer to the road, to which Mr. Oates replied yes, however it does meet the required setback and they will not need to ask for a variance for the setback or height of the sign. The only variance needed is for the size of the tenant panels. To confirm the size of the sign being requested is not bigger than the Save A Lot sign as Mr. Oates confirmed. The information presented by Benderson shows the sign to be consistent with what already exists on the location for a different store. Ms. Hicks questioned if this needs to go to the Planning Board. Mr. Busse indicated, no not for a new sign. The only objection Ms. Hicks has is that the driveway is used frequently and is very steep. In her opinion she is concerned about the sign being hit if it is closer to the road as vehicles need to make a wider turn to get in or out of that entrance. On a side note, Ms. Hicks advised that her own vehicle bottoms out when going in and out that driveway. Mr. Oates asked Ms. Hicks where her vehicle bottoms out at that entrance, as he would like to look at that area. The sign that is proposed will not impede the site of the Save A Lot sign.

Mr. Oates believes they meet the area balancing test: 1) Is there an undesirable change in the neighborhood – they do not believe so. As he showed there are other signs in the area that are taller, larger, and some the same size. This sign is very consistent with other signage in the area. 2) Is there an alternative to the variance – No, they would not be able to get visible tenant panels on the sign without the variance. 3) Is the request substantial – they do not believe so. No other variances are requested other than for the size. 4) Does the variance have an impact on the environment – No, they do not believe so. 5) Is this a self-created difficulty – Yes, but it is not the determining factor.

Ms. Hicks questioned if the sign will be LED, to which Mr. Oates replied the sign has regular backlit panels.

A letter from Erie County was received and confirmed that they have no recommendation in the proposed action, it has been reviewed and determined to be of local concern.

Motion by Greenan, seconded by Lang, to close the public hearing and grant the variance of the installation of a monument sign with 98.86 sq. ft. of a sign installation (maximum 32 sq. ft. allowed) on property located at 2303 Union Road.

Ayes: All

Noes: None

Motion: Carried

Mr. Bedient requested to be excused for a personal matter. Mr. Bedient left the meeting at 6:57 P.M.

SPR2024-24

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).

John states they have lived on the corner of Century Drive and Bayberry Avenue for just over 40 years. Mr. Nayda states their backyard is very small, and the garage is in the back lot, which does provide some degree of privacy. The back of the property has a 6-foot chain link fence with faded colored slats that predate the time they moved into the house. This fence is not theirs; it is the neighbor's fence. Mr. Nayda has discussed with the neighbor of their intent to replace that section of fence. Mr. Nayda states there are two problem sections for him; there is approximately a 20-foot section of fencing adjacent to one of his neighbors and are seeking the 6-foot fence rather than the 4-foot fence required by code. Mr. Nayda stated pictures and a letter of intent were emailed regarding his project but did not bring anything with him. He did bring a marked property survey to show what they plan to do.

None of the neighbors oppose this request. There is a row of hedges that Mr. Nayda would like to replace with the fence as they are getting harder to maintain with his age. The neighbor that would be immediately affected by the fence just installed a pool and are excited to have the fence replaced. Mr. Nayda says he will be paying to have their fence removed and disposed of. Mr. and Mrs. Nayda are trying to create a little sanctuary or privacy for themselves. There is a 4-foot section connecting the garage where his wife has a garden and Mr. Nayda is hoping that a 6-foot fence will help to deter the deer from ruining her garden.

Ms. Hicks questioned what the material of the fence would be. Mr. Nayda replied it is a colored vinyl fence. Ms. Hicks confirmed they are in receipt of the pictures that show the existing circumstances, pictures that show the hedges, and his survey. Ms. Hicks questioned according to the survey, if the plan is to go up the side of the house and replace the hedge row that is there with this fence. A variance is not needed for the other sections that Mr. Nayda wants to do. Ms. Hicks explained because this is a corner lot, the house is considered to have two front yards and they need to qualify with the area setback rules and the area rules.

There were no comments or concerns made by the public.

Ms. Hicks confirmed neighbor letters with no objection from the adjacent and surrounding neighbor letters from 122, 130, 138, and 143 Bayberry Avenue 151 and 156 Century Drive.

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 fence. 2) Is there an alternative to the variance – Yes, the applicant has tried multiple alternatives including a hedge row and a lower fence but is not sufficient to achieve the goals he and his wife want, which is safety and privacy 3) Is the request substantial – No, it is going to be an improvement and take up less space than what they 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 the determining factor.

Motion by Greenan, seconded by Lang, to close the public hearing and grant the variance for property located at 157 Century Drive to erect a 6' fence in front/side yard (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-25

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

Ms. Dueringer has withdrawn her request for a variance.

NEW BUSINESS:

SPR2024-26

Request of Matthew Smaczniak for property located at 156 Century Drive for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Mr. Smaczniak is looking to enclose his backyard and side lot that carries over to Bayberry Avenue. He had gotten a building permit and approval to fence in the backside of his garage and back on the other side of the lot last year. He is looking to completely enclose the back yard. Mr. Smaczniak provided a picture (on his phone) of the 6-foot vinyl fence that he wants to put in.

Neighbor letters with no objection were received from 96, 99, 106, and 112 Bayberry Avenue as well as testimony from Mr. and Mrs. Nayda at 157 Century Drive with no objection.

There were no comments or concerns made by the public.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the adjacent neighbors all concur with the proposal to install the fence. 2) Is there an alternative to the variance – Yes, no fence. At the same time privacy and safety of family and pets are needed. 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 Tronolone, seconded by Lang, to close the public hearing and grant the variance for property located at 156 Century Drive to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-27

Request of Shauna Lee for property located at 23 Conner Drive, for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Zach Cassas, Ms. Lee's fiancé, was present as she was unable to come. The current fence is old and breaking down and Mr. Cassas has fixed part of the fence since moving in in April 2024. These fixes are only temporary. They would like a fenced in yard, privacy, and safety for their pets and family. Mr. Cassas is requesting a 6-foot fence and a wider perimeter.

A map of the project as well as neighbor letters with no objections were provided by Mr. Cassas. Ms. Tronolone questioned what type of fence would be put in. Mr. Cassas replied with a 6-foot white vinyl fence. Ms. Greenan questioned if the reason for needing the variance is because of the different layout and questioned if they normally run with the property? Mr. Busse replied they are requesting the fence be closer to the road. The survey is showing the existing fence. The new fence will be closer to Adam Chris Drive. Ms. Hicks questioned if there is a sidewalk on Adam Chris Drive to which Mr. Cassas replied that there was. Ms. Hicks said the request does not say how far off the sidewalk the fence will be and they generally want at least 3 feet from the sidewalk. Mr. Cassas confirmed this is also what they want. Ms. Hicks confirmed he understood it is off the sidewalk, not off the property line. He confirmed that he understood. Ms. Hicks also states the 3-foot rule is for safety reasons such as someone missing a turn or swings wide giving those on the sidewalk somewhere to go. Mr. Lang pointed out the attached cover letter does state the fence will be 3-4 feet from the sidewalk.

Letters of support from the neighbors with no objection were received from the immediate neighbors at 4, 15, and 27 Conner Drive as well as 8 Adam Chris Drive.

There were no comments or concerns from the public.

Ms. Greenan stated judging what is currently there it will be an improvement to the property which will enhance the neighborhood.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No 2) Is there an alternative to the variance – No, they really have two front yards and they are trying to enclose their property for privacy and safety. 3) Is the request substantial – No, there will still be a substantial amount of room between the street and the fence as the fence will be 3-4 feet off the sidewalk. 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 Tronolone, seconded by Greenan, to close the public hearing and grant the variance for property located at 23 Conner Drive, for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-28

Request of John Stoddard for property located at 7 French Lea Road for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

John Stoddard is the owner of the duplex at 7 French Lea Road. The side yard is basically unusable as it is on Clinton Street with very heavy, fast traffic. It is not safe for pets or kids to play. The fence will go along the side of the house where the yard is unused as well as splitting the tenant's fence down the middle. This will give the tenants more space as well as giving Mr. Stoddard space as well. This fence will give privacy as well as security for the tenant's belongings.

A survey map shows the fence will be 12 feet from the sidewalk in one area and 13 feet from the sidewalk in another area. Mr. Stoddard does have neighbor letters with no objections but is missing two neighbors. One is from a non-occupied property that is being sold at 15 French Lea and the other is from an address on Clinton Street. The owners of the Clinton Street address are aware of the meeting and have no objections to the fence being put in; but indicated they are not comfortable signing any papers. The Clinton Street address is the furthest house, across the street from Mr. Stoddard. Neighbor letters with no objections were received from 7 French Lea Road (tenant), 4047, 4055, and 4070 Clinton Street. Ms. Hicks confirmed Mr. Stoddard went to 15 French Lea Road. Mr. Stoddard confirmed he did but stated there is a for sale sign in the front yard and the home appears to be vacant. Ms. Hicks questioned if Mr. Stoddard lives on the side closer to Clinton Street, he confirmed he does.

There were no comments or concerns made by the public.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, neighbor letters show no objection to the proposal. 2) Is there an alternative to the variance – No, Mr. Stoddard lives on a very busy street and is putting the fence up away from the line of traffic and will achieve privacy and safety with the installation of the fence. 3) Is the request substantial – No. 4) Does the variance have an impact on the environment – No. 5) Is this a self-created difficulty – Not really. Clinton Street is a 45-mph street, and the yard is open to the road without the fence.

Ms. Greenan questioned if any of the trees would be affected, Mr. Stoddard replied no.

Motion by Greenan, seconded by Tronolone, to close the public hearing and grant the variance for property located at 7 French Lea Road for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-29

Request of Katelyn Grimm for property located at 1069 East and West Road for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ms. Grimm is looking to put up a 6-foot fence within the backyard/front yard as this is a corner lot.

Neighbor letters with no objections were received from 1075 East and West Road, 385 and 414 Angle Road stating that there is no objection to the proposed fence. There is also a letter (ZR1 form) from Erie County stating they have no recommendation and believe this proposed action to be of local concern.

There were no comments or concerns made by the public.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the layout of the property is essentially a triangle. Not all the property will be enclosed. 2) Is there an alternative to the variance – No, the yard is wide open with the way the property runs. 3) Is the request substantial – No. 4) Does the variance have an impact on the environment – No. 5) Is this a self-created difficulty – No, there is no other opportunity for privacy other than to put up a fence for privacy and protection.

Motion by Lang, seconded by Tronolone, to close the public hearing and approve the variance for property located at 1069 East and West Road for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-30

Request of Christine Wiech for property located at 2 Lena Court for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ms. Wiech stated there used to be a row of about 16 shrubs that used to give privacy, but between the winters and the deer they needed to be taken down because they were dying. Ms. Wiech wants the fence for privacy and safety of the kids as they have a pool. The fence will be put along Gana Court. Ms. Hicks confirmed that Ms. Wiech was aware of them wanting the fence to be at least 3 feet off the sidewalk, which Ms. Wiech confirmed she understood. Ms. Hicks asked what the construction of the fence is. Ms. Wiech stated it will be white vinyl. The fence will be put across the front from Ms. Wiech's house to the neighbor's fence.

Neighbor letters with no objections were received from 4 Lena Court, 10 Gana Court and 3 Diane Court. There is also a letter from NYSDOT, because Ms. Wiech is close to Center Road, stating there is no opinion regarding the Town granting this variance.

There were no comments or concerns made by the public.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, the neighbor letters show no objection to the proposed fence. 2) Is there an alternative to the variance – Yes, this has been tried before with bushes and landscaping, which has not been sustainable. 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 there is no alternative, and this is not the determining factor.

Motion by Greenan, seconded by Lang, to close the public hearing and grant the variance for property located at 2 Lena Court for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-31

Request of Amanda Smith for property located at 107 Tobey Hill for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ms. Smith stated they put up roughly 200 square feet of fence about two years ago. Over the summer the new neighbors moved in and took down their shed. Because of this their kitchen window now looks over into the neighbor's back yard. Ms. Smith is looking to extend the existing white vinyl fence up to the back of the neighbor's house, with 2 panels. The variance is needed because this is a corner lot. The fencing that needs to be put up are between the neighbors and does not affect Tobey Hill Drive or Bradwood Road.

Neighbor letters with no objections have been received from 101, 102, 108, and 114 Tobey Hill Drive and 134 Bradwood Road.

There were no comments or concerns made by the public.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood – No, it affects one neighbor who removed their shed, and the applicant is looking to put in roughly 16 feet of matching fence to close the gap. 2) Is there an alternative to the variance – No. 3) Is the request substantial – No. 4) Does the variance have an impact on the environment – No. 5) Is this a self-created difficulty – No, because there was a shed providing the privacy needed and there is no longer a shed providing privacy and safety.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant the variance for property located at 107 Tobey Hill for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-32

Request of Peter Hall for property located at 48 Greenbranch Road for a variance to erect a front porch with a roof and sidewalk on the right side of the house (30' setback required requesting 21' 3" and 3' required setback requesting 12" for the sidewalk).

Mr. Hall is looking to have a porch put on the front of the house and is requesting the setback changed from 30 feet to 21 feet 3 inches. Mr. Hall would also like a walkway put in along the side of the house, so they have access to a gate to the backyard and not be walking on a slope or in the mud.

Ms. Hicks questioned if the plan is to replace the steps that are currently facing Greenbranch with a covered porch. Mr. Hall replied the stairs will be removed and replaced with new stairs, going down to a landing/patio which will extend out 8 feet from the front of the house. Mr. Busse informed the Board the house sits 30 feet off the front property line, which is the required setback. There are officially no permitted

patios within that setback, which is the reasoning for the variance. Mr. Hall stated they would like to have the room so they can enjoy their patio on rainy days. Ms. Hicks stated they will look at these variance requests separately. The neighbor letter with no objection has both variances included. Neighbor letters with no objection were received from 41, 42, 47, 53, and 54 Greenbranch Road with no objection to the porch roof or the walkway along the house. Ms. Hicks stated the Board generally believes that these improvements do beautify the home, make it more enjoyable to use, as well as improve the neighborhood.

There were no comments or concerns made by the public.

Chairperson Hicks referred to the area balancing test for the addition of the front porch:

1) Is there an undesirable change in the neighborhood – No, Mr. Hall has substantiated with neighbor letters saying that there is no objection to the addition of the porch to their home in the front yard setback. 2) Is there an alternative to the variance – Yes, but the Hall's have been living without cover over their front steps for many years. 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 this is not the determining factor.

Ms. Greenan believes this improves the aesthetic of the property and would only add to the character of the neighborhood in a positive way.

Motion by Tronolone, seconded by Greenan, to close this part of the public hearing and grant the variance for property located at 48 Greenbranch Road to erect a front porch with a roof in the front yard setback as requested (30" setback required requesting 21' 3").

Ayes: All

Noes: None

Motion Carried

Ms. Hicks asked Mr. Hall to explain the need for the sidewalk. Mr. Hall states there is a fence in the back yard with a gate that goes along the side of the garage. There is no way to get to the gate without walking through grass or mud (as he indicated in the picture). Mr. Hall would like to extend the driveway to be able to walk back on a concrete walkway in that area. Ms. Hicks questioned if Mr. Hall was planning to extend the driveway. Mr. Hall replied yes, they will extend the driveway by about 6 inches to the corner of the house. He believed that he could extend the driveway within 3 feet of the property line without needing any variance or permit. Ms. Hicks asked Mr. Busse for clarification on this. In her opinion she feels it looks like the sidewalk will be 4 feet 4 inches wide, but the drawing shows the sidewalk is not going all the way to the street. Mr. Busse stated it is an extension to where the garage meets the existing driveway to within approximately 12 inches off the property line, which is what they are requesting, and then serving that walkway from the front of the garage to the back corner of the

garage where the gate entrance is in the back yard. Ms. Hicks wanted to confirm that Mr. Hall is not planning on going all the way to the street with the sidewalk, just about 4 feet adjacent to the driveway. Mr. Hall explained to Ms. Hicks pointing at the drawing that he wants to have a concrete walkway to his backyard. He does plan on extending the driveway to the existing sidewalk. Mr. Busse stated a variance is not needed for the driveway, only the area seen on the drawing. The walkway going along the side of the garage serving that back gate is the only area that will be pushed over within the 3-foot mark, which is where they are requesting the 12 inches. Ms. Hicks states that there can be no impact on the neighbor as far as drainage and runoff. Ms. Hicks is concerned about the distance between the houses if the sidewalk is made to be 4 feet 4 inches as there will be 12 inches from the sidewalk to the property line. Mr. Hall is requesting the 4 feet 4 inches to match the gate at the edge of the posts, not beyond it. Ms. Greenan commented, for the sake of the Board's interpretation, that she is familiar with what this will look like as it was very common in the neighborhood where she grew up. She personally feels it will improve the aesthetic and functionality of the property. Ms. Hicks asked if Mr. Hall plans to put concrete on the other side of the fence as well, to which he confirmed, yes. There is about a 9-foot section of grass between the fence and the patio in the back yard. Ms. Hicks inquired if the section between the fence and the patio is not included in the variance, Mr. Busse confirmed that is correct, no variance will be required. Mr. Hall clarified their downspouts are tapped into the ground and go into the storm drain, so there should be no drainage issues. Ms. Hicks asked for confirmation again that the neighbor directly next to them had no objection and Mr. Hall confirmed that is correct.

Chairperson Hicks referred to the area balancing test for the driveway: 1) Is there an undesirable change in the neighborhood –No. 2) Is there an alternative to the variance -No. 3) Is the request substantial – No. 4) Does the variance have an impact on the environment – No. 5) Is this a self-created difficulty – to some extent yes as they have lived without this for many years and this will make life more convenient, but this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant the variance for property located at 48 Greenbranch Road to install a walkway on the right side of the house (requesting 12" for the walkway).

Ayes: All

Noes: None

Motion Carried

SPR2024-35

Request of Lisa Napier for property located at 182 South Drive for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ms. Napier is requesting to have a 6-foot white vinyl fence put in to help make her yard safer and help ward off the deer.

Neighbor letters with no objections have been received from 171, 180, and 184 South Drive stating no objection to the fence. Ms. Hicks questioned Mr. Busse that according to the survey she noted most of the area is in jurisdictional wetland. Mr. Busse confirmed the back yard is a wetland. Ms. Hicks then questioned if there was any information from the Army Corp of Engineers to which Mr. Busse stated because he did not receive and file this application, he cannot comment on it. Mr. Busse will speak to his colleague in the office who completed the application and then he can give a better answer. However, this would not affect anything with the proposed variance, strictly as it is for the side yard. Ms. Napier stated they are not fencing that area in relation to the wetland. It was drawn wrong on the map, and states that she spoke with the Code office earlier today. Mr. Busse questioned if the wetland issue was straightened out with the office, to which Ms. Napier confirmed it was. Ms. Hicks inquired to Ms. Napier for clarification on the survey that was submitted with the neighbor letters showing the fence will be coming off the back side of the house 13 feet and then going toward the back yard about 50 feet. Ms. Napier confirmed it will go into the back yard just before the wetland area and then enclosing the entire yard, leaving the wetland area outside of the fence. None of the neighbors object to the fence being put in.

There were no comments or concerns made by the public.

Chairperson Hicks referred to the area balancing test: 1) Is there an undesirable change in the neighborhood –No, the neighbors have no objection to the fence. 2) Is there an alternative to the variance -No. 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 this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and approve the variance for property located at 182 South Drive to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-33

Request of Diana Harfouche for property located at 1245 Seneca Creek Road for a variance to allow live music on property (live music not permitted).

Patrick Harfouche is seeking a variance to allow live music Wednesday nights starting in June through mid-September from 6–9 P.M. Ms. Hicks stated that it is her understanding that he has already had this and questioned if this was done without

applying for a permit, to which Mr. Harfouch replied yes, unknowingly. Ms. Harfouche stated that she was unaware that this was needed as Kloc's grove has been in business for many years providing outdoor music. Ms. Harfouche spoke Mr. Busse and was told that a variance was needed as this was a public event. This was a free community event that only went until 9 P.M., where with private events they usually end at 11 P.M.

This is all new to them as the new business owner of Kloc's Grove. Ms. Hicks acknowledged they only have a couple neighbors that are more than 300 feet from the property and most of them are to the rear of the property on Schultz Road. Mr. Busse stated that most of the houses are well over 1,000 feet away as well as a heavily wooded area between them and Schultz Road or even Lein Road. Ms. Hicks questioned the proximity of neighbors on Seneca Creek, to which Mr. Busse stated there is one residential house in the front yard area of Kloc's Grove that is 1,100 feet away.

Neighbor letters of no objections were received from 1260 and 1281 Seneca Creek Road and 100 Schultz Road showing no objection to the music. Letters from Erie County stating no opinion and the ZR1 form stating no recommendation were also received. Their proposed action has been reviewed and determined to be of local concern. It was also noted that NYSDOT has no opinion.

Ms. Hicks questioned the type of music that will be played. The Harfouche's replied they have a variety of music from live bands such as Rock, Blues, Country, a great variety of music. Ms. Hicks questioned if there have been any complaints about the music, to which Mr. Busse stated there have not been any complaints to Code or the Police Department.

Ms. Harfouche stated they already have a schedule posted on social media and the music is scheduled to go through September 4, 2024. Ms. Harfouche questioned if it is possible to extend this through the end of October if they decide to keep going. Ms. Hicks questioned Mr. Stachowski as this was an open-ended request, does the Board have jurisdiction to put an end date. Mr. Stachowski suggests having an end date on this variance. Mr. Stachowski suggests the Harfouche's come back in May 2025 before the June 2025 start date to get the use variance. This would need to be a new application as the previous one would expire in October 2024. Mr. Stachowski stated it was possible to grant a two-year variance if everything goes well this time and there are no issues. Ms. Hicks stated she would not be comfortable doing a two-year variance as they have never done that before. Ms. Hicks' thoughts on this, barring any complaints, police reports, fights, crazy situations or getting out of hand is that they will approve the live music from 6-9 P.M. on Wednesdays through their October meeting. At the October meeting the Harfouche's can request extension through May 2025, when they really would not have music, but will still have a continuation and then ask for an extension in May through October. They can do a six-month extension and come back every October and every May, so they do not have to keep paying the variance fee and go through all of the steps each time they come back, granted there are no problems.

Mr. Stachowski agreed that this is possible. Ms. Greenan agreed this is the most convenient option for the applicant.

Ms. Hicks questioned if Kloc's Grove is open any other day to the public, to which Ms. Harfouche replied only on Wednesday. Ms. Hicks stated they will ask for financials showing any hardship when music is not played as this is usually part of the use variance. Ms. Harfouche wanted to clarify the meaning of hardship and stated they are not experiencing any hardship. They do not need to be open on Wednesdays to offer live music to pay their bills. They are doing this is just part of being smart business owners and are doing this to increase their revenue and more importantly they are doing this to increase their market exposure. There are so many places around Western New York that have never heard of Kloc's. Ms. Harfouche gave an example of their 1st live music event where Tom Bauerle was present, and the next day spoke about how wonderful Kloc's Grove is on his radio show. This was unpaid sponsorship. Ms. Harfouche stated that this is not a hardship and does not have records with her to prove it is a hardship. Ms. Greenan questioned if Ms. Harfouche would bring in this kind of revenue or attraction on a normal Wednesday without live music, to which Ms. Harfouche confirmed they do not have business on Wednesday nights. Being a wedding business, all their business happens on Friday, Saturday or Sunday. Some events are done during the week, but typically nothing happens on Wednesday. They feel having live music brings potential new customers and does increase revenue when typically, they would have none. Ms. Hicks asked Mr. Stachowski for his opinion. Mr. Stachowski states that there is clearly a financial benefit to the business, even based on marketing benefits. It is a difficult assessment, but there is clearly a benefit to the business as well as the community. This property is unique and does not seem to be bothering anyone. Ms. Hicks stated that she would like to see their point-of-sale on Wednesdays without the music and then the difference on Wednesdays when they do have the live bands. There needs to be some sort of substantiation for the establishments that are requesting live music outdoors. Ms. Harfouche questioned when Ms. Hicks would like this report. Ms. Hicks stated that she would have liked it today as it is required with the application but advised the Harfouche's to bring the report with them in October, if granted the variance today. Mr. Harfouch stated they have only had one event and can show the revenue made if they would like to reference it. Mr. Harfouche showed the Board the revenue that was made on a Wednesday with live music compared to last year when they had no music and made no revenue. Mr. Harfouche had the information on his cell phone. Ms. Hicks stated she confirmed June 19, 2024, in the garden pavilion called Party in Pavilion with a revenue of approximately \$2,500, which the profit was slightly less because of taxes. Ms. Hicks questioned what point-of-sale the Harfouche's use, to which Mr. Harfouche replied they use Cater-EZ software.

Chairperson Hicks utilized the use variance balancing test:

1) Can a reasonable return be achieved by another method – No, if there were no music people would not be coming to the establishment and ordering drinks and food; 2) Is this a unique circumstance – yes, they do not have any neighbors closer than 500 feet; 3) Does the variance change the character of the neighborhood – No, there have been no complaints or police reports; 4) Is this a self-created hardship - yes, they are just enhancing their business, but this is not the determining factor.

There were no comments or concerns made by the public.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant the variance as requested for property located at 1245 Seneca Creek Road to allow live music on Wednesdays from 6-9 P.M. and the applicant will return before the Board, at the October 2024 meeting, to reevaluate the variance and extend it if they so wish.

Ayes: All

Noes: None

Motion Carried

SPR2024-34

Request of Angelica & Nate Springer for property located at 4348 Seneca Street to allow live music on property (live music not permitted).

Mr. Springer stated they have one-man acts booked up until October 4, 2024, on their patio to increase sales. The music is played from 8-10:30 P.M. Mr. Springer states he was unaware of the required variance until he received a letter from the Town notifying him of this.

Mr. Springer brought letters of no objection from the properties around of no objection as well as financial statements of the Ebenezer Ale House. Neighbor letters were received from 4336, 4340, and 4360 Seneca Street and 899 Main Street. There were no answers from 4312, 4316, or 4324 Seneca Street. Ms. Hicks asked if music had been played on the patio in the interim, to which Mr. Springer stated that they had. Ms. Hicks questioned Mr. Busse if there had been any calls, complaints or police reports regarding this. Mr. Busse stated there have been no complaints or police reports, but Code Enforcement did receive a call informing them of the live music and Mr. Busse then reached out to Mr. and Mrs. Springer.

Ms. Hicks questioned what kind of Point-of-Sale service is used, to which Mr. Springer stated they use Spot On. Ms. Hicks questioned if this is an industry standard for bar establishments. Mr. Springer stated Spot On is a popular POS system. Ms. Hicks stated she is looking at the analysis provided by the applicant from May 3, 2024, which clearly shows a significant drop in business between the dinner hour between 5-7 P.M. to 8 P.M. where it drops precipitously by almost two-thirds. May 10, 2024, shows a more substantial drop in the income between the dinner hour and 8 P.M. May 17, 2024,

shows about the same information. May 24, 2024, is similar reduced revenue. The start of music on May 31, 2024, shows an increase in revenue, particularly at the 9 o'clock hour. June 7, 2024, was mediocre, June 14, 2024, was better and June 21, 2024, there was a very steady flow of customers.

Comments from the public:

David and Shirley Hornyak, of 840 Main Street, stated they live right above the Ebenezer Ale house. They have had their windows rattle from the sound of the music, which they feel is very intrusive. Mr. Hornyak has called down to the bar and has been told there is nothing they can do, and they have the right to have the music. There is also another spot in the parking lot property vicinity that does music and the Hornyak's must deal with both establishments. The music ruins their weekends. Ms. Greenan questioned if the issues were during the time the special use permit was being used for this event or at other times. Mrs. Hornyak stated St. Patrick's Day is horrible and a couple weeks ago Rusty Nickel also had something going on. They have called the police regarding these issues. Mr. Busse stated those were approved special event permits.

Mr. Busse then questioned if there were any issues with the one person singing on the patio on Friday nights. Mrs. Hornyak stated it is supposed to be acoustic. The music is played with an amplifier and can be heard very clearly, even with the windows closed. Mr. Hornyak states that he needs to turn the volume up on the television just to watch as he feels it is so loud. He feels it is extremely rude and intrusive and there is no regard to neighbors.

Ms. Hicks questioned how long the Hornyak's have lived in their house to which Mr. Hornyak stated 32 years. Ms. Hicks then stated that there has been some sort of bar establishment there longer than they have lived there. Mrs. Hornyak stated it was quiet and peaceful when they moved in and there was no live music. Mrs. Hornyak stated this is a slippery slope and questions what happens if or when Rusty Nickel Brewing Co. comes in and wants a variance too.

The Hornyak's explained the fact is there are two bars, almost right in front of residential homes. The other bar has banquets and more special events and are extremely loud at night. Ms. Hicks replied that she understands what the Hornyak's are saying, but that is not what they are considering today. The Board is looking at a specific day and time – Fridays from 8-10:30 P.M. for one person and possibly a two-person act. There is to be no live outdoor music outside of this variance and with the variance they need to comply with the noise ordinance. Ms. Hicks questioned Mr. Busse

about what the remedy was for making sure the music during these two and a half hours would be kept at the level that is acceptable on the Town level during that time. Mr. Busse replied that someone would need to be on site at the resident's house with a noise meter to make that determination. The music stops at 10:30 P.M. when the noise ordinance officially goes into effect at 11 P.M. and Mr. Busse is not aware that is going to make a difference or not. The Hornyak's can call the Police Department and file a police report.

Ms. Greenan stated the Hornyak's need to separate the Ebenezer Ale House (the Applicant) from the Rusty Nickel Brewing Company and states the Ebenezer Ale House is farther away from their home than the Rusty Nickel Brewing Company. Mr. Hornyak stated the first time there was music, they did not have an issue because it was all acoustics and not amplified at all. The last time they had music; it was amplified and very loud. When it gets loud, they have had the police come to the house and offered to have different people come into the house to witness their windows rattling and vibrating. Mr. Busse asked when the last time the police were called. Mr. Hornyak responded they called about 3 weeks ago, but that was on the Rusty Nickel Brewing Company. Mr. Busse then questioned if they ever called the police on the Ebenezer Ale House for being too loud or going past 11 P.M. Mrs. Hornyak replied that they have not because they only have St. Patrick's Day, from what she can see. Mr. Busse explained the Ebenezer Ale House has had these performances for the past 5-6 weeks now and wondered if these specific events caused an issue? Mrs. Hornyak replied that the last one was loud and did bother them. Mr. Busse questioned if the police were called on Ebenezer Ale House, to which Mrs. Hornyak responded she does not want to call the police all the time. Mr. Busse explained they need to call the police, because their office is closed during those hours and these issues need to be put on record and reports need to be made. Once the reports have been made, they are then forwarded to his office, and these are things that can be brought to the Board meetings for instances just like this. Mr. Hornyak explained they have tried to call the establishment and talk to a manager; if there is a push back, they then call the police, but cannot call the police every time. Ms. Hicks questioned why not, and Mr. Busse further explained they need to call every time. Mr. Hornyak explained that when this first started happening about 4 years ago, they called the police and there were no records made by the police of any of their calls.

About 20 neighbors came to the September 2021 meeting to complain mainly about the Rusty Nickel Brewing Company and no police reports were recorded. He further explained that when the police are called, they feel like they are being interrogated by being questioned about why they need a police report. Mr. Hornyak suggest someone

from the Board needs to speak with the police and let them know if a complaint come in, it needs to be recorded and verified. Mr. Hornyak states the only thing Ebenezer Ale House has for their decibels is a download on a cell phone. Ms. Hicks states that she does not know what the industry standard is for measuring decibels but suggests that the Hornyak's call the police and file a report if their windows are rattling on Friday nights between 8-10:30 P.M. because this is an issue. The establishments still need to comply with the regulations when special permits are issued. Furthermore, Ms. Hicks explained the Rusty Nickel Brewing Company is its own thing and advocated for the neighbors up on Main Street, when that was first proposed. They are not talking about the Rusty Nickel Brewing Company right now and if there is a problem with them, they need to do the same thing and make sure the Police are called and a report is filed.

Ms. Hicks explained the reason for the meeting today is to talk about the Ebenezer Ale House having a one-person act and a one day two-person act with live outdoor music on Fridays from 8-10:30 P.M. between now and October 4, 2024. There is no live music allowed outside other than at these times, if approved. Mrs. Hornyak stated she looked at the application and it shows the music will be acoustic, does this mean no amplification? Ms. Hicks and Mr. Busse both stated, no it does not mean that. Acoustic means a person with a guitar or stringed instrument that is not an electric instrument but has amplification and the person would have a microphone. They would still need to be below the threshold. If there was no amplification it would be hard to hear a guitar or singing outside with people talking, drinking and eating. Ms. Hicks gave an example of speaking with and without the microphone to show how much better you can hear with amplification. The level of amplification and impact on the neighbors is where they draw the line and is what the law is intended for. Ms. Hicks asked if Mr. Stachowski had an opinion. Mr. Stachowski states that no matter what the use variance is for they need to follow the Town Noise Ordinance, which is always in effect. If the music sounds loud, they need to call the Police and they will check a decibel level. Mr. Stachowski also suggests that if the music is rattling windows on Friday night call the police and make a report and then on Monday call the Code Enforcement office and let him know what happened.

Mrs. Hornyak continues to state that when the police are called for rattling windows, they are told the music is ok, to which Mr. Busse advised to call the on duty Lieutenant or the next day or Monday reach out to the Chief of Police and let them know the patrolman that came out while windows are rattling is telling you it is okay. That is not acceptable. Ms. Hicks also suggests going to the police department the next day as a complainant and request a copy of the police report and submit that to Code Enforcement, who will then make it a matter of the public record so that the Zoning

Board has it for when they come back again seeking another variance. Mr. Hornyak stated maybe moving will be the only answer. Ms. Hicks stated this issue cannot be resolved today, but the Board has heard their side and have given them options for recourse. The owners of Ebenezer Ale house have also heard the issues the Hornyak's are having and are aware the Board can revoke or not grant another variance if the rules are not followed.

Mr. Busse's opinion because of neighbor issues and concerns, is that the Board does not grant the variance all the way through September or October but have them come back in a month and see how things are going or if any complaints have come through the Code Department. Ms. Greenan sympathizes with the experience the Hornyak's have illustrated. She believes it is hard to tell whether the experience is with Ebenezer Ale House or Rusty Nickel Brewing Company and believes this is something that needs to be figured out if the variance is granted. They should have the opportunity to show they can be good neighbors and uphold the standards that are in the Town Code and if they cannot that would be a code violation and they would not be likely to renew a variance for them.

Mr. Busse stated he will personally reach out to the Police Department and have them send a patrolman up to the Hornyak's area to see the level of music on a Friday night. Mrs. Hornyak replied that would be much appreciated and like that someone else would be looking out as well. Mrs. Hornyak questioned if the variance is granted for live outdoor music and the other bar wants the same thing, will they be granted the variance as well, to which Ms. Hicks replied it is a case-by-case situation. The Rusty Nickel Brewing Company's record is different with the Town versus the Ebenezer Ale House. It is believed that the Ebenezer Ale House does not have any police reports or complaints, to the Board's knowledge. Ms. Greenan commented that she understands the frustration and issues with one establishment but does not want to punish another establishment because of the actions of another.

Ms. Hicks called the owners of the Ebenezer Ale House back to the microphone. She questioned if they heard the neighbors' concerns and confirmed they understood that if this variance is to be granted, they will be very sensitive to issues that were raised. Mr. Springer confirmed they would and stated they will get a decibel reader so that they can make sure they are within the allowed range. Mr. Busse stated he will give them the exact decibel number.

Ms. Hicks questioned what each of the Board members thoughts are. Ms. Greenan stated she is okay with granting the variance but will keep in mind what the neighbors had to say and will be evaluating that if they come back to renew the variance. Reminds

the Hornyak's to call the police if there is an issue. Ms. Greenan is okay granting the variance through the October date, but questions if the Board would prefer a shorter length of time to ensure this would be alright with the neighbor's concerns. Ms. Tronolone stated she would grant a variance for a shorter period to see how this would work out with the neighbors. Mr. Lang agrees approving a shorter period would be appropriate, basing this off of how other variances were handled. Ms. Hicks commented that the Ebenezer Ale House has someone already scheduled for June 28 and then July 5, 12, and 19, which is before the next meeting of July 24, 2024. After that meeting there are 5 more dates before the August meeting. If they are asked to come back to the August 28, 2024, meeting they will have 9 weeks to determine and questioned the Board if that was too long to wait for them to come back.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant the variance as requested for Ebenezer Ale House located at 4348 Seneca Street to allow acoustic music single acts with one duet (July 19, 2024) through August 23, 2024, on Friday nights from 8-10 P.M. returning to appear before the ZBA on August 28, 2024, to review and reevaluate.

Ayes: All

Noes: None

Motion Carried

Motion by Tronolone, seconded by Greenan, to close the public hearing at 8:58 P.M.

Ayes: All

Noes: None

Motion Carried