

Chairperson Hicks questioned the duration of the patio permit. Mr. Shaw stated April 1 – October 31 noting there was no live outdoor music the previous October because of the weather; he is also proposing changing the Friday hours from 7 P.M. – 10 P.M. to 6 P.M. – 9 P.M. out of consideration for the neighbors.

Dave Bystrak, 4721 Clinton Street, stated he has no objections to live indoor music and has no issues to report; the relationship between himself and the owner is better. Chairperson Hicks stated Mr. Bystrak's letter was received and confirmed he is amenable to the earlier hours on Fridays. Mr. Shaw concurred but stated he does not agree that live outdoor music should begin in April and would prefer a May – September variance.

Ms. Greenan questioned whether both indoor and outdoor variances are being considered. Chairperson Hicks stated the Zoning Board can determine this. Mr. Busse recommended the Zoning Board requires the applicant to return at some point to review the circumstances. Ms. Tronolone stated the Zoning Board should only address the indoor variance. Mr. Bystrak stated he does not have any issues with the live indoor music.

Dale Kling, 4760 Clinton Street, stated he does not have any issues with live indoor music.

Ms. Greenan stated because of the improved communication between the owner and neighbors, she would be in support of live indoor and outdoor music. Chairperson Hicks stated she does not anticipate the need for live outdoor music in April. Mr. Shaw stated he would prefer to have the option but would only schedule live outdoor music in April if the weather was conducive to this.

Chairperson Hicks stated Mr. Shaw has demonstrated that live music increases the revenues, but the neighbors have requested live outdoor music begin no sooner than May. Mr. Shaw shared an instance where he obtained the Town's and Mr. Bystrak's approval for a special event in December and would like to have this option available if there should be a mild weekend in April. Mr. Busse stated this type of request should be addressed with the Code Enforcement Office. Mr. Bedient stated his preference would be to approve live indoor music for any time and live outdoor music for May and June, with the applicant returning in June. Mr. Stachowski agreed with granting a variance for May and June and then assessing the situation.

Ms. Greenan stated the discussions between the applicant and neighbors address the use balancing test no. 3 – does the variance change the character of the neighborhood, and questioned if the board can adopt the previous balancing test evaluation. Mr. Stachowski advised the Zoning Board may adopt their evaluation from previous minutes.

Motion by Hicks, seconded by Bedient, to approve a variance for property located at 4717 Clinton Street to allow live indoor music on Fridays and Saturdays between 8 P.M. – 11 P.M. from January 22 - June 25, 2025; and live outdoor music from May 1 – June 25, 2025, as follows: Fridays 6 P.M. – 9 P.M., Saturdays 7 P.M. – 10 P.M., and Sundays 1 P.M. – 4 P.M. with the applicant to return on June 25, 2025.

2024-043

Request of Dave Sutton of Sutton Architecture for property located at 555 Orchard Park Road for a variance to allow live music on the property (live music not permitted).

Dave Sutton, of Sutton Architecture and The Ridge, made the following comments:

- ✓ Consistent live indoor and outdoor music two nights per week with the days varying

- ✓ Per customers, live music in the brewery cannot be heard in the dining room
- ✓ No impact on neighboring properties and is not aware of any complaints
- ✓ Live music is essential to remain competitive and does not believe this is a self-created hardship
- ✓ Live music is contracted between the hours of 6 P.M. – 9 P.M. or 7 P.M. – 10 P.M.

Chairperson Hicks asked Mr. Sutton about the live outdoor music. Mr. Sutton stated during the summer months the bands are given the option of performing indoors or outdoors, during the designated times with the occasional acoustic performance on Sunday afternoons. Neighboring businesses have complimented the pleasant atmosphere the music creates.

Mr. Busse stated no complaints have been received.

Mr. Stachowski stated the testimony of the financial hardship of the applicant is sufficient given the extreme uniqueness of the property and the absence of impact on residential neighborhoods.

Mr. Sutton stated the business is experiencing a 15 – 20% increase in revenue when there is live music.

Mr. Sutton stated he is seeking approval for one day between Monday and Friday and one day on the weekend with flexibility between days based on private parties. Chairperson Hicks stated she would support two days per week without differentiating between weekdays and weekends. Mr. Stachowski recommended differentiating to avoid possible conflicts. Mr. Sutton stated the business uses social media to advertise all events. Mr. Bedient stated he would support only designating the hours. Ms. Greenan stated she would prefer to follow Mr. Stachowski's recommendation. Mr. Busse stated he does not foresee any issues.

Chairperson Hicks stated location of The Ridge is unique.

Motion by Greenan, seconded by Tronolone, to close the public hearing and grant a variance for property located at 555 Orchard Park Road for a variance to allow live music on the property Monday – Sunday between 6 P.M. – 10 P.M. for the period of one year with the applicant to return to the Zoning Board of Appeals in January 2026.

Ayes: All

Noes: None

Motion: Carried

2024-51

Request of Logan Bruckman for property located at 4343 Clinton Street to allow a variance for the construction of an addition to existing dwelling of 35' front setback (front setback maximum 40').

Motion by Tronolone, seconded by Lang, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion: Carried

2024-57

Request of Kyle Kowal for property located at 985 Center Road for a variance to erect a 6' fence in front/side and 70' projection past house permitted (maximum 4' height allowed in front yard and 10' projection allowed).

Motion by Tronolone, seconded by Lang, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion: Carried

2024-059

Request of Mark Goldsmith for property located at 25 Smallwood Drive for a variance to install a second driveway (R-65 permits one (1) driveway per property).

Motion by Tronolone, seconded by Bedient, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion: Carried

NEW BUSINESS:

2024-061

Request of Jason Quarles and Ed Kuebler of Total Basement Finishing of WNY for property located at 614 Dorrance for a variance to install egress window within the front yard setback 27' (front setback maximum 30' allowed).

Jason Quarles of Total Basement Finishing of WNY appeared on behalf of the homeowner and made the following comments:

- ✓ While the front door faces Brookside the front yard is on Dorrance Avenue
- ✓ Homeowner may add a bedroom on Dorrance Avenue side of the house which will require an egress window
- ✓ The setback will be 27' and not the required 30'

Chairperson Hicks stated neighbor signatures with no objection to the variance were received from residents at 246 Brookside Drive. Further, with corner lots both sides are considered the front yard.

Ms. Greenan referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, there are neighbor letters in support and the circumstances are unique; 2) Is there an alternative – Mr. Busse stated this location is most feasible due to the property's dimensions; 3) Is the request substantial – no, the request is not substantial; 4) Does the variance have an impact on the environment – no, there is no impact on the environment; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

Chairperson Hicks stated Erie County's response to the ZR-1 is that it is of local concern. Town Clerk Newton stated that NYS was notified, and 30 days have lapsed with no response.

No public comments were received.

Motion by Greenan, seconded by Bedient, to close the public hearing and grant a variance for property located at 614 Dorrance for a variance to install egress window within the front yard setback 27'.

Ayes: All

Noes: None

Motion: Carried

2024-062

Request of John F. Hasse on behalf of El Jefe Mexican Restaurant for property located at 1340 Orchard Park Road for a variance for outdoor seating (outdoor seating not permitted).

John Hasse, partial owner of The Hamlet, made the following comments:

- ✓ The request is for El Jefe restaurant and the ice cream business
- ✓ The existing 12' x 30' patio will be cleaned up for outdoor seating
- ✓ A few picnic tables will be placed in the existing 30' x 45' enclave area

Chairperson Hicks asked if there is parking in the proximity of the enclave. Mr. Hasse stated there is a traffic pattern but no parking. Mr. Bedient asked if there is parking in the concrete portion of the parcel. Mr. Hasse stated there in the middle of the traffic flow pattern and noted the dog day care generates very little traffic. There is physical separation near the dog day care.

Chairperson Hicks asked about the protective measures for the patrons seated outside. Mr. Hasse the front patio has existing landscaping with large rocks and trees, and large bollards will be added according to the town's specifications in front of the enclave. Mr. Hasse stated the bollards must be moveable so snow can be cleared to this area in the winter months.

Ms. Greenan referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – Mr. Hasse stated many ice cream businesses have seating but cannot provide financial data. Mr. Stachowski stated it is reasonable if outdoor seating has not been attempted not to have financial information. The Zoning Board should require proper vehicle protection.; 2) Is this a unique circumstance – Yes, based on the location of the business and desiring a safe outdoor seating space for patrons. Mr. Hasse stated he views this as a way to remain competitive; 3) Does the variance change the character of the neighborhood – Mr. Hasse stated the only homeowner was within the notifiable distance and through text messages the homeowner has indicated he has no issue with the plans. Mr. Busse confirmed this was the only signature his office required. Ms. Greenan concluded the request does not change the character of the neighborhood; 4) Is this a self-created hardship – Mr. Hasse stated he is uncertain how to respond but does not believe there is a hardship. Ms. Greenan agreed but noted that is not the determining factor.

Chairperson Hicks stated the neighbor at 1332 Orchard Park Road does not oppose the request and further indicated that his driveway was not to be used. Erie County Department of Environment and Planning has no recommendation, and the action is determined to be of local concern. No response was received by NYS which is inferred to be no objection to the request.

Motion by Tronolone, seconded by Bedient, to close the public hearing and grant a variance for property located at property located at 1340 Orchard Park Road for a variance for outdoor seating with the stipulation that shielding be installed to prevent motor vehicles from entering the seating area and the applicant will work with the Code Enforcement Office on the details.

Ayes: All

Noes: None

Motion Carried

2025-001

Request of Joe DeMarco for property located at 236 Pellman Place for a variance to erect a home dwelling withing the road frontage 54' (road frontage setback maximum 75')

Joe DeMarco, owner of 236 Pellman Place, stated he is requesting permission to build a ranch style home for his son on the property. He presented the neighbors' signatures.

Mr. Busse added that the parcel where the new house will be built is adjacent to Mr. De Marco's current home at the dead end of the street. Pellman Place is only 54' wide but the zoning is R-75 requiring 75' of frontage.

