

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

**ZONING BOARD OF APPEALS  
Minutes #2020-01  
January 22, 2020**

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairman Timothy Elling at 7:00 P.M. followed by the Pledge of Allegiance led by Evelyn Hicks and 30 seconds of silent prayer.

**ROLL CALL:** Present - Timothy J. Elling, Chairman  
Evelyn Hicks  
Michael P. Hughes  
Raymond Kapuscinski  
Douglas Busse, Code Enforcement Officer  
Kimberly Conidi, Deputy Town Attorney

Absent - None

Chairman Elling read the Fire Prevention Code instructing the public where to exit in case of a fire or an emergency.

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Chairman Elling congratulated Mr. Hughes on being selected as the West Seneca Citizen of the Year from the West Seneca Chamber of Commerce.

### **OPENING OF PUBLIC HEARING**

Motion by Hughes, seconded by Hicks, to open the public hearing.

Ayes: All

Noes: None

Motion Carried

### **APPROVAL OF PROOFS OF PUBLICATION**

Motion by Hughes, seconded by Hicks, that proofs of publication and posting of legal notice be received and filed.

Ayes: All

Noes: None

Motion Carried

### **APPROVAL OF MINUTES**

Motion by Hicks, seconded by Hughes, to amend the Minutes #2019-11 of December 4, 2019, page two (2019-64) paragraph three and change the word indicted to indicated.

Ayes: All

Noes: None

Motion Carried

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**OLD BUSINESS**

**2011-047**

Request of Lynda Otto for a variance for property located at 183 Westcliff Drive to allow raising chickens on property.

Chairman Elling stated the petitioner has been coming before the board on a yearly basis since 2011; no complaints were registered with the Police Department over the past year relative to the chickens.

Mr. Hughes questioned the number of chickens and roosters. Ms. Otto replied she has six chickens and no roosters.

No comments were received from the public.

Motion by Hughes, seconded by Elling, to close the public hearing and grant a one year variance for property located at 183 Westcliff Drive to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2011-060**

Request of Dennis Sullivan for a variance for property located at 1481 Orchard Park Road to allow raising of chickens on property.

Chairman Elling stated the petitioner has been coming before the board on a yearly basis since 2011; no complaints were registered with the Police Department over the past year relative to the chickens.

Chairman Elling questioned the number of chickens. Ms. Sullivan replied she has 5 chickens and no roosters.

No comments were received from the public.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and grant a one year variance for property located at 1481 Orchard Park Rd to allow raising of chickens on property.

Ayes: All

Noes: None

Motion Carried

**2012-036**

Request of Melinda & Edward Bauerlein for a variance for property located at 72 Sunset Creek Drive for permission to raise five chickens.

Chairman Elling stated there are no complaints were registered with the Police Department over the past year relative to the chickens.

Mr. Bauerlein stated he currently has two chickens and questioned if he could be allowed a two year variance.

Code Enforcement Officer Doug Busse replied the reason for the one year variance is to ensure there are no issues with neighboring properties; possible complaints are checked with the Police Department and Code Enforcement Office. Currently chickens are not permitted anywhere in the Town Code.

No comments were received from the public.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and grant a one year variance for property located at 72 Sunset Creek Drive for permission to raise five chickens.

Ayes: All

Noes: None

Motion Carried

**2017-074**

Request of Lamar Advertising for a variance for property located at 730 Orchard Park Road to convert existing 14' x 48' billboard face to a 12' x 25' digital face within 500' of residential zoning.

Chairman Elling stated after speaking with representatives of Lamar Advertising the publication did not specify the lumens to be used. It was mutually agreed upon to table the item until February to allow the petitioner to work with the Town Attorney on corrections for next month.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to table this item until the February meeting to allow for revision of the legal notice.

Ayes: All

Noes: None

Motion Carried

**2019-064**

Request of Derek Hortman for a variance for property located at 101 Round Trail Road to allow a 6'3" - 7' high fence in rear and side yard (maximum 6' high fence in rear yard & maximum 4' high fence in side yard).

Ms. Hicks stated the following concerning the application of Derek Hortman (the petitioner) for a variance for a fence located at 101 Round Trail Road:

- ✓ Mr. Hortman applied for a fence variance for his side and rear yard setback, ranging from 6'3" to 7' tall. Said fence request is for a height exceeding the 4 and 6 foot heights currently allowed by West Seneca Town Code.
- ✓ The current fence replaces a former existing fence surrounding the yard which includes an inground pool. Mr. Hortman installed the current fence prior to receiving a fence permit.
- ✓ The Heritage Farms neighborhood is generally built on a downward slope from east to west and south to north. Due to the slope, the petitioners fence is of varying heights as to look even when standing in the yard.
- ✓ Mr. Hortman applied for a fence permit in October 2019
- ✓ The Zoning Board of Appeals (ZBA) requests that all applicants supply letters of support from neighbors. Mr. Hortmans neighbor to the south (93 Round Trail) was the only neighbor to not sign on for approval of the fence along his property line which at some points exceeds the 6 foot allowance.

The Zoning Board held two public hearings on this matter at which time the petitioner and the neighbor had ample opportunity to speak on the subject. During that time, it became evident there is a neighbor dispute that goes beyond the topic of a fence. The neighbors were offered opportunities to resolve their differences and no resolution was achieved.

I've visited the neighborhood and subject property on numerous occasions and have reviewed the information provided both by the petitioner and by the opposing neighbor at 93 Round Trail and I find that, due to the slope of the lots in this subdivision, it would be difficult to have a uniform height enclosing the petitioner's yard.

The ZBA must consider five factors for an area variance: The fence does not produce an undesirable change in the neighborhood as this type of fence is typical in this neighborhood. The fence is aesthetically pleasing and presents an attractive addition to the neighborhood. The character of the neighborhood is unchanged by the installation of the fence. The benefit of the fence to the petitioner cannot be achieved by a feasible alternative, as the fence is required to surround the pool in accordance with local law. It is reasonable for the petitioner to desire a higher fence for safety and for

2019-064 (continued)

privacy. The requested variance is not considered to be substantial, as this type of fence is typical for the neighborhood and all neighbors, except for the neighbor at 93 Round Trail, have approved the fence. There is no adverse effect on the physical and environmental condition of the neighborhood due to the installation of the fence. Although this is a self-created hardship by the petitioner, this fact is not the determinative factor in approving or denying this request as no one factor is dispositive. Rather, this board is charged with considering all of the factors and balancing them accordingly.

Based on the totality of the circumstances and after careful consideration of the five factor test forth in Town Law §267-B(3)(b), I make a motion to approve the variance as requested.

Motion by Hicks, seconded by Kapuscinski, to grant a variance for property located at 101 Round Trail Road to allow a 6'3" - 7' high fence in rear and side yard (maximum 6' high fence in rear yard & maximum 4' high fence in side yard).

Ayes: All

Noes: None

Motion Carried

2019-071

Request of Child Creative Development Center for a variance for property located at 2900 Transit Road to reduce required 10' setback to meet parking requirements.

Chairman Elling stated the petitioner was not present.

Motion by Hicks, seconded by Kapuscinski, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS**

**2019-070**

Request of Damian Ruzbacki for a variance for property located at 135 Cambridge Avenue to construct a deck with roof extending into required front setback.

Chairman Elling stated the petitioner was before the board last year but did not obtain his building permit within the required 6 months; at that time approval letters from neighbors were turned in.

Mr. Ruzbacki stated two years ago he raised the roof on the property and would like to put on a front porch with a roof.

Ms. Hicks questioned if the project will be complete by this summer. Mr. Ruzbacki replied the project will be completed by summer.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 135 Cambridge Avenue to construct a deck with roof extending into required front setback.

Ayes: All

Noes: None

Motion Carried

**2020-001**

Request of Patrick Eck for a variance for property located at 55 South Pierce Streer to authorization for the operation of a home business.

Mr. Eck stated he is requesting a variance for home occupation; the Town Code specifies medical and particular business (i.e. accountants, real estate). The business he is looking to open does not fall within those categories. Mr. Eck is a Buffalo Police Officer who is looking to obtain his Federal Firearms License to be the intermediary for procurment of firearms and ammunition for profesional colegues and municipalities. New York guidelines make it difficult and uneconomical for law enforcement officers to train and maintain proficiencies. This business will attempt to make the procurment very simple and economical. Part of the licensing requirement is obtaing the zoning letter to further file the application.

Chairman Elling questioned what will be sold out of the home. Mr. Eck responded stock will not be kept; he will be buying specific items for the purchaser and run the required

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**2020-001** (continued)

background check without the purchaser needing to go to a larger facility. It is a simpler plan and more cost effective process. There will be not training done in the home, only sales. The business will be specific to law enforcement officers; there will be no signs or advertising.

Code Enforcement Officer Doug Busse stated the petitioner has the proper zoning but Federal Firearms Licensed Dealer is not specified; the petitioner is seeking approval to have that included under the definition of home occupation in the town. If approved, the petitioner would still need to seek approval from the Town Board and Planning Board. This meeting is just to have Federal Firearms Dealer in the home occupation language.

Mrs. Hicks questioned if this is only for this specific property. Mr. Busse replied it is specific to this address.

Deputy Town Attorney Kimberly Conidi questioned if Mr. Eck is the owner of the property and further stated in the C-2 districts under §120-20 this may be a permitted principle use which allows machine, tool, farm or garden equipment sales. Mr. Eck replied he is the owner of the property.

Ms. Conidi recommended to table the request; in past situations this has been handled differently depending on how situations were presented to the board.

Mr. Hughes questioned if Mr. Eck is acting as a broker. Mr. Eck replied that is correct; he will procure what has been asked for at wholesale prices.

Mr. Busse reiterated the variance is to specifically for including Federal Firearm Licensed Dealer to home occupation status in West Seneca.

Mr. Elling stated he was in receipt of neighbor letters from 59, 50, 43, 46, 68 and 93 South Pierce who had no objections.

Ms. Conidi recommended tableing the item for further investigation. Ms. Conidi would like to investigate if the Zoning Board of Appeals would be amending a portion of the Town Code. Ms. Conidi believes this to be a use variance and under the town law the test is very stringent and specific and would require a conversation with the applicant before the next meeting. The petitioner would be required to demonstrate he can not realize a reasonable return; the alleged hardship relating to the property is unique; the requested use variance, if granted would not alter the character of the neighborhood; the alleged hardship has not been self created.

**2020-001** (continued)

A neighboring resident stated Mr. Eck is a police officer with an excellent reputation. The neighbors have no issue as there will be no signage, no added traffic and other officers will pick up their specific item.

Motion by Elling, seconded by Kapuscinski, to table the item until February to allow for further review.

Ayes: All

Noes: None

Motion Carried

**2020-02**

Request of Bogdan Wisniewski for a variance for property located at 486 Union Road to erect a garage with 15' midpoint building height (12' maximum allowed).

Mr. Wisniewski stated he hired an Amish contractor to build his roof; after measuring the midpoint is too high. Mr. Wisniewski commented on the beautiful job that was done and is not sure how the mistake was made.

Chairman Elling stated Mr. Wisniewski was here last year and found it confusing how the mistake was made. Neighbor letters/emails were presented from 511 and 496 Union Road and 2, 8, 9 and 15 Timothy Court (back neighbors with full view) stating they did not have an issue with the building as it is a vast improvement from the tent that is up. The neighbors have no issue with the building and its height conditional upon the removal of the tent.

Mr. Wisniewski stated as soon as the garage is complete the tent will be done. There was a stop work order until this was straightened out. Mr. Wisniewski stated by May 15<sup>th</sup> the job will be done with the tent down.

Chairman Elling stated nothing has been received from the NYSDOT and the garage is set back from the property.

Deputy Town Attorney, Kimberly Conidi stated it is better to have the approval from the NYSDOT in hand or wait the required 45 days; it is her recommendation to wait until the 45 days are completed.



**2020-02** (continued)

No comments were received from the public.

Motion by Elling, seconded by Hughes, to table the item pending approval from the NYS DOT.

Ayes: All

Noes: None

Motion Carried

**2020-03**

Request of Metzger Civil Engineering for a variance for property located at 2890 N. America Drive to erect a 7' fence with barb wire (6" maximum height allowed).

Michael Metzger from Metzger Civil Engineering stated he is representing Raine Logistics who was successful in obtaining site plan approval for the project located on N. America Drive. The property is zoned M-1; what is being proposed is a 14,300 sf building. The client will keep vehicles on site and a small storage facility to house customer products. The proposal is to secure the facility with a fence around the outside to be activated when vehicles are entering and exiting. As an extra level of security, the petitioner would like to put barbed wire on top of the 6' fence bring it to just under 7'.

Chairman Elling questioned if there will be security on site. Mr. Metzger responded there will not be.

Code Enforcement Officer Doug Busse stated there is nothing currently in the Town Code prohibiting barbed wire on fencing; the variance is strictly for the height being above 6'.

No comments were received from the public.

Motion by Hughes, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 2890 N. America Drive to erect a 7' fence with barb wire (6" maximum height allowed).

Ayes: All

Noes: None

Motion Carried

