

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

ZONING BOARD OF APPEALS
Minutes #2021-03
March 24, 2021

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairman Timothy Elling at 6:00 P.M. followed by the Pledge of Allegiance.

ROLL CALL: Present - Timothy J. Elling, Chairman
Amelia Greenan
Evelyn Hicks
Michael P. Hughes
Raymond Kapuscinski
Douglas Busse, Code Enforcement Officer
Tina Hawthorne, Town Attorney

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

Ayes: All

Noes: None

Motion Carried

APPROVAL OF MINUTES

Motion by Greenan, seconded by Hughes, to approve Minutes #2021-02 of February 24, 2021.

Ayes: All

Noes: None

Motion Carried

OLD BUSINESS

2016-018

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

Motion by Elling, seconded by Hughes, to table the item at the request of the petitioner until the April meeting.

Ayes: All

Noes: None

Motion Carried

2017-59

Request of Robert Jemiolo for renewal of variances for property located at 3369 – 3385 Clinton Street to: 1) allow outdoor patio seating until 9 P.M. Sunday – Thursday and until 11 P.M. Friday and Saturday; 2) allow an unpaved parking lot

2017-59 (continued)

Mr. Jemiolo stated he is requesting the same days and times for the outdoor seating.

Chairman Elling questioned if an agreement was come to with the Code Enforcement Office in regards to the parking lot. Mr. Jemiolo stated that an agreement has been reached and there is no long a need for an unpaved parking lot.

Mr. Hughes questioned if any complaints were on file with the Police Department. Chairman Elling replied no complaints have been registered.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a one year variance for property located at 3369 – 3385 Clinton Street to allow outdoor patio seating until 9 P.M. Sunday – Thursday and until 11 P.M. Friday and Saturday; and deny the unpaved parking lot.

Ayes: All

Noes: None

Motion Carried

2021-004

Request of Joseph Jerge for a variance for property located at 4141 Clinton Street to construct a detached garage with a height of 14 ½' to midspan of roof (12' midspan permitted)

Mr. Jerge stated he has spoken with the NYSDOT since the last meeting, and they are requesting he install an apron into the state's right-of-way. Code Enforcement Officer Doug Busse stated an agreement is in place with the state and Mr. Jerge will be installing an apron when black top season approaches.

Chairman Elling stated he is in receipt of NYSDOT approval with the following conditions:

- NYSDOT does not object to the Town granting a variance for a garage with a height higher than permitted. However, NYSDOT requests that any approval is conditioned that the applicant paves the stone driveway on the westerly side of the house from the road to at least the highway right-of-way line.
- A NYSDOT Highway Work Permit will be required to pave the driveway area that is located within the State Highway Right-of-Way. Additional site engineering review will be performed as part of the Highway Work Permit process. This correspondence does not constitute approval for the purpose of a Highway Work Permit.

Chairman Elling stated he was in receipt of neighbor letters with no objection from 4160, 4148, 4150, 4138, 4131, 4111, and 4130 Clinton Street.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 4141 Clinton Street to construct a detached garage with a height of 14 ½' to midspan of roof with the following conditions: 1) the applicant paves the stone driveway on the westerly side of the house from the road to at least the highway right-of-way line; 2) A NYSDOT Highway Work Permit will be required to pave the driveway area that is located within the State Highway Right-of-Way with additional site engineering review being performed as part of the Highway Work Permit process .

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2021-007

Request of Dawn and Joseph Orzano for a variance for property located at 16 North Windmill Road to construct a 24'x24' addition with a 15' backyard setback (30' backyard setback required)

Ms. Orzano stated her request is to construct an addition that will add an extra bedroom and bathroom to her home. The residence will become a 4 bedroom, 2 bath home and fit into the character of the neighborhood. There are no rear neighbors and the property has a wooded lot in the back.

Chairman Elling stated he was in receipt of neighbor letters with no objection from 10, 22, and 16 North Windmill Road.

Ms Hicks questioned if this was a one-story addition. Ms. Orzano stated that is correct; this is a ranch home.

Motion by Elling, seconded by Hickss, to close the public hearing and grant a variance for property located at 16 North Windmill Road to construct a 24'x24' addition with a 15' backyard setback.

Ayes: All

Noes: None

Motion Carried

2021-008

Request of F.J Wailand Associates, Inc. for a variance for property located at 50 Ransier Drive to construct a roof extension with side yard setback of 5' 6" (10" side yard setback required)

Mr. Wailand stated New Waste is currently operating a waste recycling business in the building. The building has a 16' eve height; DEC ordinances mandate the dumping must occur within a closed structure. The request is to put on a second roof, raising the height for clearance. The existing framework will not allow this due to being out of current code. Owners of the adjacent property at 54 Ransier Drive have provided correspondence with no objection to the setback.

Chairman Elling noted the property is very well kept and commended the tenant on the upkeep. Chairman Elling stated he was in receipt of neighbor letters with no objection from 54 Ransier Drive.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 50 Ransier Drive to construct a roof extension with side yard setback of 5' 6".

Ayes: All

Noes: None

Motion Carried

2021-009

Request of Megan Brooks for a variance for property located at 137 Greymont Avenue to erect a 6' fence in front and side yard on corner lot (maximum 4' height permitted)

Chairman Elling stated he was in receipt of neighbor letters with no objection from 131 Greymont Avenue and questioned who installed the sidewalk. Ms. Brooks replied the previous owner installed the sidewalk.

Code Enforcement Officer Doug Busse stated the fence should be 3' from the sidewalk regardless of the placement of the sidewalk. The Town Highway Department would have control of the location of the sidewalk. This is not an issue for the town.

Chairman Elling explained a 6' fence is not allowed to go right up to a sidewalk. This is done so a pedestrian has an out in case of a car jumping the curb. This provides a buffer in case of emergency.

Mr. Kapuscinski requested clarification the sidewalk location. Mr. Busse stated if there was an issue it would need to be removed, but that does not have anything to do with the placement of the fence. The sidewalk would not be moved closer to the house.

Motion by Elling, seconded by Greenan, to close the public hearing and grant a variance for property located at 137 Greymont Avenue to erect a 6' fence in front and side yard on corner lot, noting the fence shall be 3' off the existing sidewalk.

Ayes: All

Noes: None

Motion Carried

2021-010

Request of Seth Amman of Arch & Type for a variance for property located at 164 Edson Street to construct a new single-family home with 15' front yard setback (30' front yard setback required) and 7,150 sf lot size (8,000 sf lot size required)

Mr. Amman was present on behalf of the future owners. The request is to construct the home on a slightly smaller lot with reduced setback that aligns with neighboring homes.

Chairman Elling stated he was in receipt of neighbor letters with no objection from at 160, 163, and 169 Edson Street and 138 and 139 and Duerstein Avenue.

Code Enforcement Officer Doug Busse stated approximately five years ago a house was demolished due to structural issues. Parking setbacks will be factored in with building department permits.

Ms. Hicks questioned if there will be a garage. Mr. Amman stated that is the plan.

2021-010 (continued)

Motion by Hughes, seconded by Greenan, to close the public hearing and grant a variance for property located at 164 Edson Street to construct a new single-family home with 15' front yard setback and 7,150 sf lot size.

On the question, Chairman Elling thanked the future owners for investing in a new home in an older neighborhood.

Ayes: All

Noes: None

Motion Carried

2021-011

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

Ms. Greiner stated she was not aware poultry was not allowed in West Seneca and has had her chickens since last spring. Ms. Greiner is teaching her children the benefits of taking care of animals and what they produce for the family. The chickens have a run in the yard, with plenty of space.

Chairman Elling explained chickens are not allowed in West Seneca without a variance. After the initial variance is granted, the petitioner returns once a year to ensure there are no problems with the neighbors and Police Department.

Chairman Elling stated he was in receipt of letters of approval from property owners at 4211, 4208, 4213, 4209, 4201, 42242, 4240, and 4214 Clinton Street as well as the NYSDOT. Chairman Elling stated the application states there is currently 19 chickens. Code Enforcement Officer Doug Busse replied the Town Code does not state a number that is allowed. Mr. Hughes stated traditionally this board allows up to 6 chickens. Through attrition, Ms. Greiner should get down to 6 chickens.

Chairman Elling explained the property backs up to the creek and there are no rear neighbors. Ms. Hicks noted the depth of the lot is 345'.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a one year variance for property located at 4211 Clinton Street to allow raising of chickens.

Ayes: All

Noes: None

Motion Carried

2021-012

Request of Shane Swetland for a variance for property located at 68 W. Bihrwood Drive to construct a covered porch with 24' front yard setback (30' front yard setback required)

Mr. Randolph was present on behalf of the petitioner and stated he would like to put a covered front porch on the house and would like the extra space for rocking chairs and walkers.

2021-012 (continued)

Chairman Elling stated he was in receipt of letters of approval from property owners at 55, 67, 71, 72, and 64 W. Bihrwood Drive.

Motion by Hughes, seconded by Hicks, to close the public hearing and grant a variance for property located at 68 W. Bihrwood Drive to construct a covered porch with 24' front yard setback.

Ayes: All

Noes: None

Motion Carried

2021-013

Request of Alex Miller c/o Joseph Lorigo for a variance for property located at 3448 Clinton Street to allow temporary storage of up to five (5) trailers (zoning regulations not permitted in R-60A)

Mr. Lorigo stated, his client, Mr. Miller rents out empty trailers during the summer months and is looking for temporary storage pending customer use. The property currently is not zoned to allow the trailers. Mr. Miller previously attempted to obtain rezoning for the property and was unsuccessful. If a temporary variance was granted for a year, it could show there are no issues. There is rarely more than a couple of trailers on the property at a time. There are some drainage concerns with neighbors and Mr. Miller is willing to address the issues.

Chairman Elling stated he is in receipt of correspondence from the NYSDOT stating the following: NYSDOT does not object to the town granting a variance for trailers to be stored at the subject property. However, before any approval is granted, NYSDOT requests that turning templates are submitted for our review so we can determine if vehicles with a trailer attached can properly enter and exit Clinton Street.

Mr. Miller stated the longest trailer is 12' - 14'.

Mr. Lorigo provided a letter of approval from Mr. Clark, the property owner of 3438 and 3440 Clinton Street.

Chairman Elling stated he is in receipt of a neighbor letter from Gardenville on the Green stating the property is in disarray. Mr. Lorigo stated there were issues in the past with regard to a fence and lawn art that his client put up and the neighbors in the rear at Gardenville on the Green were opposed to. Mr. Miller has since rectified the situation, and is willing to erect a fence for the neighbors to block the view. Mr. Miller is looking to make amends and move beyond to prove the trailers will not be an issue.

Chairman Elling referred to the letter and stated there were a total of seven trailers, an unlicensed truck, a bobcat and excavator on the property. Mr. Miller stated several things are still on the property including a truck on a trailer and two trailers.

Chairman Elling referred to the Planning Board meeting and questioned why the items are still on the property after the request was denied. Mr. Miller replied he sought legal council and required time.

Chairman Elling referred to the photos submitted with the letter. Mr. Miller stated the photos are from last summer and there was an escalating history between himself and the residents of Gardenville on the Green. The

2021-013 (continued)

neighbors were used to green space behind them even though their portion is only 20' deep. Mr. Miller stated he is attempting to lead by example with this variance and is willing to put up fences, a drainage plan and pavement to utilize the property.

Mr. Hughes asked the name of the company. Mr. Miller stated his company is a landscaping business called Dump King, LLC., and also refurbishes houses.

Town Attorney Tina Hawthorne stated most of this board has reviewed the minutes from the Planning Board and Town Board meetings. The Planning Board did not recommend a zoning change to the Town Board and the Town Board did deny the request; there was the issue of spot zoning.

Code Enforcement Officer Doug Busse stated the Planning Board meetings were in November and December 2020. The Town Board denial came in January 2021. Many conversations have been had with Mr. Miller and this is the route he decided. The lot still needs to be paved and drainage submitted.

Chairman Elling questioned if the drainage was required with the variance. Mr. Busse replied drainage is not required for the variance but is required by the Code Enforcement Office and Engineering Department. This variance is strictly for the storage of construction equipment in a R-60A zoning which is not permitted.

Robert Holm residing 8 Gardenville on the Green stated he is also a board member of the townhouse community that the property backs up to. The quality of life issues of the association will be impacted. Many families with children play in the area. The noise will be an issue as well as the unsightly views. Many association members have invested money into their patios and their view is beyond what the fence blocks. Mr. Holm's believes this to be a strategy so Mr. Miller can continue to run his business from this location which is not zoned for this. There are many areas and sites in town where the equipment can be stored. Many have expressed concerns of the value of their homes since Mr. Miller has purchased the property.

Tony Manna stated he owns two properties to the east adjacent to Mr. Miller's property. There is a drainage problem that has been brought to Mr. Miller's attention and there is at least 2' height difference between the properties.

Ms. Greenan asked for clarification of the proposed fence location. Mr. Miller replied the fence would be along the east side and possibly a secondary fence along the back; splitting up the property to protect Gardenville on the Green. There are trees and shrubbery blocking Mr. Clark's side.

Mr. Miller stated the neighbors have been difficult. As soon as he pulls in they take pictures of the equipment. Tenants have had arguments while walking their dogs along the back. Mr. Miller uses the back of his lot and the neighbors wish to keep green space.

Mr. Kapuscinski questioned the paving and drainage outside of the variance. Mr. Busse stated regardless of the variance, Mr. Miller is required to provide a drainage plan and pave the lot.

Mr. Holm's stated Mr. Miller illegally tied into a private drain installed by the homeowner's association and was brought up at the Planning Board meeting. The homeowner's association will be taking steps to rectify the

2021-013 (continued)

situation as it enters their property on the east side. Mr. Miller connected from his property to the association property on the east side. It appears from Mr. Miller's comments that he intends to still use the property to operate a business and the association strongly objects.

Ms. Hicks stated her opinion is that typically on Clinton Street there is mixed zoning. There are other parcels on Clinton Street that were zoned residential and attempted to change to commercial use. Consistent with the prior use on the site there was an Article 78, changing the zoning from residential to commercial and the applicant who was against the rezoning won at the appellate division. To be consistent and honor the fact this is a residentially zoned area with a narrow lot size of 68', the zoning that exists and deny the request and stay consistent with the appellate division ruling that have taken place on Clinton Street as well as the Town of West Seneca.

Ms. Hicks stated the following:

Concerning the application of Alex Miller (the petitioner) for a variance for storage of trailers at 3448 Clinton Street: Mr. Miller applied for a variance for his rear yard setback for the temporary storage of up to five empty trailers. This use is not currently allowed by West Seneca Town pursuant to the Town Code governing R-60A zoned parcels.

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 neighbors. I find that, in part due to the width of the lot, the parking of "empty trailers" in the petitioner's yard would be considered a nuisance.

As to the balancing test of the legal factors for the requested variance:

1) The presence of the trailers produces an undesirable change in the neighborhood, as this type of use is not typical in this predominantly residential neighborhood. The rear lot has traditionally been used for residential use, with the exception of a two-story frame building on the side that was used as a barber shop downstairs that was fully functional inside the building. This use will add temporary structures to the neighborhood on an inconsistent and possibly ongoing basis. The cumulative height of the temporary structures will add to the undesirable change in the neighborhood. The lack of letters of support from the neighbors, as requested by the ZBA, and the opposition of the neighbors here tonight certainly supports that this would be an undesirable change in the neighborhood.

2) The issue of whether the benefit sought by the applicant can be pursued by method other than a use variance is unclear in the record, as it was not addressed by the applicant. Nevertheless, it is one factor to be considered that is not particularly relevant given the lot is zoned residential and the proposed use is patently not allowed under the current Town Code. There are many commercial properties that could handle this use.

