

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 Hughes  
Raymond Kapuscinski  
Douglas Busse, Code Enforcement Officer  
Stephan Stachowski, Deputy Town Attorney

Absent - None

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**OPENING OF PUBLIC HEARING**

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

Ayes: All Noes: None Motion Carried

**APPROVAL OF PROOFS OF PUBLICATION**

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

Ayes: All Noes: None Motion Carried

**APPROVAL OF MINUTES**

Motion by Elling, seconded Kapuscinski, to approve Minutes #2021-11 of December 1, 2021.

Ayes: All Noes: None Motion Carried

**OLD BUSINESS**

**2020-077**

Request of Robert Jemiolo for renewal of a variance for property located at 3385 Clinton Street to allow live music

The applicant was not present.

Chairman Elling stated this was the second meeting that the applicant was not in attendance.

A Clinton Street resident stated his home is next door to The Critchen. The resident has filed numerous police complaints with the Police Department for loud music and music going past the allowed times. This piece of

**2020-077** (continued)

property was spot zoned specifically for the applicant and should not be allowed. The sounds come over the property line and the operating times have not been respected. There is a noise ordinance in town, and this should be adhered to.

Chairman Elling stated the Police Records Department provided him with nine reports of various dates throughout 2021; seven complaints were cleared by the Police Department and were reported as quiet upon arrival and two reports were shown to have excessive noise or open beyond the hours allowed.

A Race Street resident stated throughout the summer she was able to hear the music across the creek. Chairman Elling questioned the time the music was heard; the applicant is allowed to have live music within certain time frames. The resident stated it was after dark during the summer, approximately 10:00 PM.

Mr. Jemiolo arrived at the meeting and Chairman Elling provided a brief synopsis of the meeting.

Mr. Jemiolo stated this is bar and there will be complaints. Sometimes the complaints are out of his control, and he has done his best to control the noise. Mr. Jemiolo stated he has tried to be a respectful neighbor, and everyone has a different level of tolerance and believed a decibel meter would show the noise is not excessive.

Chairman Elling asked Mr. Jemiolo is he believed any of the complaints were called in after hours. Mr. Jemiolo stated whether music is playing or not it is still noise and is not about the music. At 11:00 PM the music is turned off and just noise is a different story, it is not noise from a live band. There should be a level of tolerance. If the door opens and music is playing from the jukebox this is not in violation of the variance. Mr. Jemiolo stated other than the noise complaints, he is a good neighbor and trying his best to keep his business afloat.

Chairman Elling read the times the complaints were called in: 2307, 2333, 2002, 2410, 2234, 2226, 2314, 2410 and 2317. All the complaints were after 11:00 PM

Mr. Jemiolo questioned if the complaints were for live bands or noise in general. Chairman Elling stated he is referring to all complaints with the Police Department.

Mr. Jemiolo noted he previously had a tenant living above the bar and he may have been responsible for some of the complaints. The tenant was told there would be live music and was offered the chance to find alternative living arrangements.

Chairman Elling stated in 2020 the NYSDOT provided correspondence about the parking in the front of the building; earlier today there was a car parked where the lines should be blacked out. Mr. Jemiolo stated he did not know about the parking situation until recently.

Chairman Elling stated this was an issue brought to Mr. Jemiolo's attention at the October 28, 2020, meeting, referring to the minutes stating: Chairman Elling stated he was in receipt of a letter from the NYSDOT with no objection to the music but noted upon further review of the plans, the five parking spots in the front of the building are encroaching into the NYS highway right of way for Clinton Street. The parking spaces are to be

**2020-077** (continued)

eliminated by removing the paved parking area. Chairman Elling stated Mr. Jemiolo is to work with Code Enforcement and the NYSDOT to remedy the situation.

Mr. Jemiolo stated he can darken in the spaces when time permits and questioned what else can be done.

Chairman Elling stated this was brought to his attention in October 2020. Mr. Jemiolo was supposed to work with the NYSDOT and Code Enforcement Office.

Motion by Elling, seconded by Kapuscinski, to close the public hearing and deny renewal of a variance for property located at 3385 Clinton Street to allow live music until the NYSDOT request regarding the five parking spots in the front of the building which are encroaching into the NYS highway right of way for Clinton Street has been adhered to with the Code Enforcement Office approval.

Ayes: All

Noes: None

Motion Carried

**2011-047**

Request of Lynda Otto for renewal of a variance for property located at 183 Westcliff Drive to allow raising chickens on property (raising of poultry/farm animals not permitted)

Motion by Elling, seconded by Greenan, to table the item at the request of the applicant until the February 2022 meeting.

Ayes: All

Noes: None

Motion Carried

**2011-060**

Request of Dennis Sullivan for renewal of a variance for property located at 1481 Orchard Park Road to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Motion by Elling, seconded by Kapuscinski, to table the item at the request of the applicant until the February 2022 meeting.

Ayes: All

Noes: None

Motion Carried

**2012-036**

Request of Melinda & Edward Bauerlein for renewal of a variance for property located at 72 Sunset Creek Drive for permission to raise five chickens (raising of poultry/farm animals not permitted)

Mrs. Bauerlein stated she only has hens and no roosters.

Chairman Elling stated no complaints were registered with the Police Department over the last year.

No comments were received from the public.

**2012-036** (continued)

Motion by Elling, seconded by Hicks, to close the public hearing and grant a one year variance for property located at 72 Sunset Creek Drive to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**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)

Ms. Arzaga stated the situation is the same as previous years, no roosters.

Chairman Elling stated no complaints were registered with the Police Department over the last year.

No comments were received from the public.

Motion by Elling, seconded by Greenan, to close the public hearing and grant a one year variance for property located at 227/229 Pellman Place to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2021-011**

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 has fewer chickens than last year, no roosters.

Chairman Elling stated no complaints were registered with the Police Department over the last year.

No comments were received from the public.

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

Ayes: All

Noes: None

Motion Carried

**2013-13**

Request of Brian and Lisa Hirsch for renewal of a variance for property located at 122 Tampa Drive to allow raising of chickens (raising of poultry/farm animals not permitted)

Mrs. Hirsch stated she has no roosters, and everything is the same as last year.

**2013-13** (continued)

Chairman Elling stated no complaints were registered with the Police Department over the last year.

No comments were received from the public.

Motion by Elling, seconded by Greenan, to close the public hearing and grant a one year variance for property located at 122 Tampa Drive to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2017-022**

Request of Julie Dembski for renewal of a variance for property located at 171 Wetherstone Drive to allow raising of chickens (raising of poultry/farm animals not permitted)

Mrs. Dembski stated she has no roosters, and everything is the same as last year.

Chairman Elling stated no complaints were registered with the Police Department over the last year.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a one year variance for property located at 171 Wetherstone Drive to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2019-010**

Request of Tim and Robin Stolinski for renewal of a variance for property located at 227 Seneca Creek Road to allow raising of chickens (raising of poultry/farm animals not permitted)

Motion by Elling, seconded by Kapuscinski, to table the item until the February 2022 meeting.

Ayes: All

Noes: None

Motion Carried

**2020-019**

Request of Cynthia Gaasch for renewal of a variance for property located at 68 School Street to allow raising of chickens (raising of poultry/farm animals not permitted)

Ms. Gaasch stated she has no roosters, and all is the same as last year.

Chairman Elling stated no complaints were registered with the Police Department over the last year.

No comments were received from the public.

**2020-019** (continued)

Motion by Elling, seconded by Hicks, to close the public hearing and grant a one year variance for property located at 68 School Street to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2020-024**

Request of Elisa and Jason Kirby for renewal of a variance for property located at 102 Toby Hill Drive to allow raising of chickens (raising of poultry/farm animals not permitted)

Mr. Kirby stated he has no roosters, and the situation is the same as last year.

Chairman Elling stated no complaints were registered with the Police Department over the last year.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a one year variance for property located at 102 Toby Hill Drive to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2020-048**

Request of Jeffrey Walters for renewal of a variance for property located at 49 Country Lane to allow raising of chickens (raising of poultry/farm animals not permitted)

Mr. Walters stated he has no roosters, and the situation is the same as last year.

Chairman Elling stated no complaints were registered with the Police Department over the last year.

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 49 Country Lane to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2020-085**

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

Ms. Lanyzs stated there was a report filed with the Police Department.

**2020-085** (continued)

Code Enforcement Officer Doug Busse stated the Code Enforcement Office received a neighbor complaint regarding rats and feces on the ground. Mr. Busse did inspect the property with the ECDOH who made suggestions and the yard was cleaned up. The last time Mr. Busse was at the property was August 3, 2021 and the complaints regarding the property have ceased.

Ms. Lanyzs stated the storage of feed has changed and the chickens are not outside of the pen without her.

A Lyndale Court resident stated there was an increase in rats when the chickens were allowed. Since the county came to the home, the rat activity has significantly decreased. As long as the area is kept clean and no feed is on the ground, he has no issues with the chickens and feels everthing is in order.

Ms. Hicks referred to the complaint and questioned if the neighbor was able to enjoy his yard again. The resident stated he is able to use his yard, the siuation has improved. Ms. Lanyzs made the adjustments that needed to be done. There are still rats in the area as other neighbors ground feed.

Motion by Elling, seconded by Hicks, to close the public hearing and grant a six month variance for property located at 88 Lyndale Court to allow raising chickens on property.

Ayes: All

Noes: None

Motion Carried

**2020-049**

Request of New Hope Methodist Church for renewal of a variance for property located at 2846 Seneca Street to construct a LED sign within 500' of residential property (LED signs not permitted within 500' of residential zoning)

A representative from New Hope Methodist Church stated she has the program working and the sign is shut off at night.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a one year variance for property located at 2846 Seneca Street to construct an LED sign within 500' of residential property.

Ayes: All

Noes: None

Motion Carried

**2012-58**

Request of Ronald Race for renewal of a variance for property located at 1100 Orchard Park Road for display of storage sheds for sale

Chairman Elling stated the applicant has been receiving a variance since 2012; no complaints were registered with the West Seneca Police Department and Code Enfocement Office.

No comments were received from the public.

**2012-58** (continued)

Ms. Hicks noted this company has continually made improvements to the property.

Chairman Elling suggested making this a permanent variance. Ms. Hicks stated if the business changes hands this variance would not be in effect.

Ms. Greenan questioned Deputy Town Attorney Stachowski if it was permissible to grant a permanent variance, if the property was sold would this variance travel with the owner. Mr. Stachowski stated he would need to report back to the board with an answer.

Chairman Elling noted the property is being rented by Race Storage Sheds. If they are no longer renting, the variance does not follow. Mr. Stachowski stated he believed variances run with the land and will investigate this.

Ms. Greenan suggested an extended variance in lieu of a permanent variance due to not being sure of the legalities.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a five-year variance for property located at 1100 Orchard Park Road for display of storage sheds for sale.

Ayes: All

Noes: None

Motion Carried

**2021-056**

Request of Tammy Weisbeck for a variance for property located at 1729 Union Road to allow off-site advertising (no off-site advertising permitted)

Chairman Elling stated the applicant asked to be tabled. There is a fee for the publications and when applicants do not attend the meeting, the residents are paying the fee. This is the second time the applicant was not present. Chairman Elling suggested to receive and file the application. When the applicant is ready to attend, she may file for a variance at no charge.

Ms. Hicks stated the main reason for tabling the item in the fall was that this was a use variance. The town does not allow advertising on an LED sign for business for other than the business for which the variance was granted. The only other use would be for community events and information. Advertising for other business is not allowed on LED signs. There is no provision in the ordinance to allow this and would allow every business in town the opportunity to do the same. Ms. Hicks stated she strongly objects to this. This is a larger issue that the Deputy Town Attorney should investigate and advise upon.

Code Enforcement Officer Doug Busse stated it is not just LED signage; no signage is allowed off site advertising.

Chairman Elling stated this section of Union Road does not allow billboards and asked the Deputy Town Attorney to research.



**2021-056** (continued)

Deputy Town Attorney Stephan Stachowski requested clarification. Ms. Hicks stated she opposes the variance since the town does not allow businesses, other than the business that owns the sign, to advertise on the sign. In Ms. Hicks opinion, this is a use variance. Ms. Hicks requested Mr. Stachowski to confirm this is a use variance, and what options the town has. Ms. Hicks suggested this be denied as a policy. Ms. Hicks requested guidance and substantive documentation that this was researched.

Motion by Elling, seconded by Hughes, to receive and file the variance request for property located at 1729 Union Road to allow off-site advertising.

Ayes: All

Noes: None

Motion Carried

**2021-062**

Request of Steven Hollis for a variance for property located at 646 Potters Road to allow parking of vehicles and parking area in front yard setback (no vehicles allowed within front yard setback)

Chairman Elling stated Mr. Hollis was before the board previously to split the parcel, and unfortunately the concrete pad was already poured. Mr. Hollis stated the pad was poured approximately two years ago.

Chairman Elling stated a letter was received from the NYSDOT stating they had reviewed the information submitted for the subject variance and have the following comment: upon inspection of 646 Potters Road, we took notice of work recently performed within the state right of way which was not permitted. Our findings indicate the driveway at 646 Potter Road does not meet the current standards for a residential driveway as far as width or offset from property line. We do have provisions which allow for 5' offset to be waived if the adjoining property allows it. As for the substandard width of approximately 18' we are willing to allow this to remain as built. We do have concerns about the commercial property to the east, which is identified as 644 Potters Road, we will require the highway permit work application be filed with this office to correct the current substandard commercial driveway.

Mr. Hollis stated he has been in contact with the NYSDOT, and they are helping with the state permit. NYSDOT has explained this a formality.

Chairman Elling stated this needs to be completed. Code Enforcement Officer Doug Busse stated the concern is for 644 Potters Road and the variance is for 646 Potters Road.

Ms. Hicks stated the letter states they will get a variance and Mr. Jemiolo's letter stated he would not. Chairman Elling stated this is a residential property as opposed to commercial.

Ms. Greenan stated the Jemiolo property had a concern from the state on that particular property whereas in this case the concern is regarding a neighboring property.

Mr. Busse noted the Clinton Street property has the building closer to the road with the parking spaces located directly in the state right of way. The residential house is pushed backed and the space is not in the right of way.

**2021-062** (continued)

Mr. Kapuscinski stated when a car is parked in front of the house, it appears a car will stick out into the right of way by the telephone pole. Mr. Busse stated the survey shows 23' from the front of the porch to the front property line where the right of way begins.

Ms. Hicks displayed a photo from today, illustrating the back of a car being in the right of way. Mr. Busse stated there is 23', the telephone pole is not the start of the right of way. A standard parking spot is 9' x 18'.

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 646 Potters Road to allow parking of vehicles and parking area in front yard setback.

Ayes: All

Noes: None

Motion Carried

**2021-065**

Request of Lawrence Sikorski for a variance for property located at 765 Fisher Road to construct a pole barn/garage with 14.5' midspan (maximum 12' midspan allowed)

Ms. Sikorski presented neighbor signatures for 717 Fisher Road with no objection to the pole barn.

Chairman Elling questioned the driveway; at the previous meeting Erie County expressed concerns that the driveway was on a neighboring property. Ms. Sikorski stated they do not use that driveway; the neighbor uses that area.

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 765 Fisher Road to construct a pole barn/garage with 14.5' midspan.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS**

**2021-067**

Request of Nicole Pearce for a variance for property located at 132 Greenwood Avenue to construct a 2-family home with 1) 24' front yard setback; 2) on 9,200-sf lot; 3) parking of two vehicles in front setback (30' front yard setback required; 13,000-sf lot required for 2-family home; open off-street parking not allowed in front yard setback)

Ms. Pierce stated she intends to build a 2-family home. The property is currently zoned to allow for a 2-family residence, but several variances are required. This would align the structure with the other homes on the street.

**2021-067** (continued)

Chairman Elling stated he is receipt of neighbor letters with no objection to the 24' front yard setback and 9,200-sf lot. There is not mention of the parking of cars on the neighbor letter.

Ms. Greenan stated in the past items have been tabled when part of the variance was missing.

Code Enforcement Officer Doug Busse stated he will provide a new neighbor letter immediately.

Ms. Pierce requested to have the two variances approved tonight.

Ms. Greenan questioned if two variances could be approved today, and the third variance be voted on separately next month.

Mr. Hughes stated he believed the third variance would need to be received and filed, the board could vote on the first two, and the applicant reapply for the third.

Chairman Elling questioned Deputy Town Attorney Stachowski on the protocol. Mr. Stachowski stated he did not have a specific legal answer to provide and questioned the applicant if she needed to ensure the parking was approved for the project. Ms. Pearce stated she did. Mr. Stachowski deferred to the Code Enforcement Officer.

Mr. Busse stated the applicant could proceed with the two variances is granted today. If the third variance was denied at the next meeting, the site plan would need to be reconfigured.

Chairman Elling asked the Deputy Town Attorney to advise. Mr. Stachowski stated he understood and has not dealt with this before. The town made a mistake by not writing all three variances, the Zoning Board of Appeals may give a minimal approval today and can vote on two out of three.

Ms. Hicks noted 13,000-sf is required with a 9,200-sf lot requested. This is a well-established neighborhood with older housing and not many empty lots to be developed. This is an unusual situation with the area immediately adjacent to this area being built out. Ms. Hicks is in favor of the variances as this is a stand-alone project on a smaller size lot and warrants special consideration.

No comments were received from the public.

Motion by Hicks, seconded by Greenan, to close the public hearing and grant the following two variances for property located at 132 Greenwood Avenue to construct a 2-family home with 1) 24' front yard setback; 2) on 9,200-sf lot; noting, the third request for the parking of two vehicles in front setback is tabled pending the receipt of neighbor letters.

Ayes: All

Noes: None

Motion Carried

**2022-001**

Request of Julius Aebly c/o Sean Hopkins, Esq. for a variance for property located at 1465 and 1471 Union Road, 798 Center Road, and 150 Fremont Avenue to construct a 2-story office building with 1) 22' rear yard setback; 2) 8-parking spaces (30' rear yard setback required; 62 parking spaces required)

Sean Hopkins with the law firm Hopkins Sorgi & McCarthy PLLC presented on behalf of the applicant with the following points:

- ✓ The proposed project consists of the redevelopment of approximately 1.2 acres of land located at 1465 Union Road, 1471 Union Road, 798 Center Road and 150 Fremont Avenue (the "Project Site") a commercial project.
- ✓ The Project Site includes a former convenience store and gas station on 1465 Union Road that has been closed for many years
- ✓ The redevelopment project includes a 2-story office building with a footprint of approximately 3,080 sq. ft. to be located on the northern portion of the Project Site (Parcel 1) that will be occupied by the Applicant's insurance business, Aebly & Associates, as well as a future commercial building to be located along the Union Road frontage of the Project Site that will consist of a restaurant with a drive-through facility (Parcel 2).
- ✓ The redevelopment project also includes all related site improvements depicted on the Site Plan prepared by Anthony Pandolfe, P.E., of Carmina Wood Morris DPC attached to this Variance Application.
- ✓ During its meeting on November 15, 2021, the Town Board adopted resolutions for the purpose of issuing a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA"), amending the zoning classification of approximately .99 acres of the 1.2-acre Project Site from C-1 to C-2(S) and granting a Special Use Permit for the proposed future restaurant with a drive-through facility on Parcel 2.
- ✓ The proposed redevelopment project was reviewed by the Planning Board during its meeting on October 14, 2021, and it adopted a resolution by a unanimous vote recommending approval of the rezoning of a portion of the Project Site and issuance of a Special Use Permit by the Town Board.
- ✓ Area Variance No 1: The eastern rear yard setback of the proposed two-story professional office building to be located on Parcel 1 is less than required pursuant to Section 120-31 B(2) of the Zoning Code (30 ft. required vs. 22 ft. proposed). Note: Section 120-31 B(2) of the Zoning Code states that in any C District the rear yard setback, abutting an R District boundary, shall be 30 feet or the distance equal to the height of the principal building, whichever is greater. The proposed building height is less than 30 ft. and as such the 30 ft. rear yard setback requirement applies.
- ✓ Area Variance No 2: The total number of parking spaces to be provided on Parcel 1 (Professional Office Building) is less than permitted pursuant to Section 120-41 D(1) of the Zoning Code [62 spaces required vs. 8 spaces proposed. Note: Section 120-41 D(1) of the Zoning Code states that professional offices are required to provide one (1) parking space for every 100 square feet of gross floor area. The Applicant is the owner of both Parcel 1 and Parcel 2 and a reciprocal access easement and parking easement for the benefit of Parcel 1 will be recorded at the Erie County Clerk's Office. The total number of parking spaces for the overall project will be 47 spaces and the Applicant anticipates needing approximately 13 parking spaces for the use of Parcel 1 as a professional office building to be occupied by Aebly & Associates.
- ✓ Mr. Aebly sent a very detailed letter to seven of the nearby property owners who signed support letters.
- ✓ Town Law Section 267-b(3)(b):  
Statutorily mandated balancing test:

**2022-001** (continued)

▪ “The benefits to the applicant if the area variances are granted as weighed against the detriments to the health, safety and welfare of the neighborhood or community.”

▪ Granting of the requested area variances will result in substantial benefits to the Applicant without any detriments to the health, safety and welfare of the neighborhood or community

Benefits that will be received by the Applicant if the requested relief is granted include:

1. The Applicant will be able to construct a two-story professional office building consisting of 6,160 sq. ft. of space that will be occupied by Aebly & Associates, the Applicant’s insurance business, on the southern portion of the Project Site [Parcel 1]. In the absence of the requested rear yard setback of the two-story professional office building on Parcel 1, the square footage the professional office building would not be large enough to accommodate the Applicant’s insurance business.

2. The Applicant will be able to provide a suitable number of parking spaces in connection with the proposed redevelopment project. There will be a total of 47 parking spaces provided for the overall redevelopment project. The parking requirement per strict application of Section 120-41 D(1) of the Zoning Code for the two-story professional office building to be located on Parcel 1 is excessive since it would require 62 parking spaces to be provided. The Applicant anticipates needing approximately 13 parking spaces for the use of Parcel 1 as a professional office building to be occupied by Aebly & Associates.

3. The Applicant will be able to develop the Project Site in a manner consistent with the project layout that has been presented to both the Town Board and the Planning Board in connection with the approved rezoning of a portion of the Project Site and the issuance of a Special Use Permit for a restaurant with a drive-through facility.

✓ Town Law Section 267-b(3)(b):

Criteria #1: Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested area variances.

positive impacts to character of the neighborhood

Criteria #2: Whether the benefits sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variances.

▪ No. It would not be possible for the Applicant to receive the benefits it is seeking without the granting of the requested relief

Criteria #3: Whether the requested area variances are substantial

▪ Requested area variances are not substantial –Key is the impacts

Criteria #4: Whether the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

▪ No.

▪ Site Plan Application pending before the Planning Board

▪ Town Board issued a negative declaration pursuant to SEQRA

Criteria #5: Whether the alleged difficulty was self-created.

▪ Town Law §267-b(3)(b) expressly this criterion cannot be sole basis for decision

Mr. Hughes questioned the number of employees. Mr. Aebly stated in total there are 24 employees spread between this office, Grand Island, Long Island and Boston, NY. The West Seneca office has 13 employees.

Chairman Elling questioned how many offices will be in the building. Mr. Aebly stated one office. Chairman Elling questioned the number of cubicles. Mr. Aebly stated there will be conference rooms and a common space and is not sure the number of cubicles yet.

**2022-001** (continued)

Ms. Hicks stated there are 13 employees, the request is for 8 parking spaces, there are 2 separate parcels with the intent to develop parcel 1 now and questioned if parcel 2 will be developed by Mr. Aebly or sold for future development which could impact the reciprocal parking. Mr. Hopkins stated while the phase 2 building is not yet proposed, some of the parking will be included now with 15 spaces. Parcel 1 will have 8 spaces and Parcel 2 with 15 spaces in phase 1 of the development. The long-term goal would be to lease the property.

No comments were received from the public.

Code Enforcement Officer Doug Busse explained with the project being in the Union Road corridor, shared parking allows for a decrease in parking spaces by 15%, lower than what Mr. Hopkins alluded to.

Motion by Elling, seconded by Greenan, to close the public hearing and grant a variance for property located at 1465 and 1471 Union Road, 798 Center Road, and 150 Fremont Avenue to construct a 2-story office building with 1) 22' rear yard setback; 2) 8-parking spaces.

Ayes: All

Noes: None

Motion Carried

**2022-002**

Request of Steven Senger for a variance for property located at 1997 – 2003 Ridge Road for construction of a new 2,730-sf restaurant and all associated site work with 3' off street parking setback (10' off street parking setback required)

Todd Marcovich with ABD Engineering presented on behalf of the applicant stating the project is for a parking area setback for Ridge Road. The existing property is composed of three separate parcels, approximately 1 acre in size, all narrow in width. Two parcels are residential properties, and one is a vacant lot. The proposal is for a Burger King 2,700-sf in size along with double drive through. Rezoning has been granted by the Town Board. Site Plan review is before the Planning Board in February. Tonight's request is for a variance for the front parking setback with 3'. There is not a lot of depth to get everything on the location. The client is under contract for a third property which reduced the need for more variances.

Code Enforcement Officer Doug Busse noted 10' is required from the front property line; the way the drive lanes are set up, the request is for 3'.

Ms. Hicks questioned if this would cause a problem with traffic flow on Ridge Road or a problem with ingress and egress to the proposed restaurant. Mr. Busse stated this should not happen because the width requirement is met. Mr. Markovic stated a traffic study was conducted and the conclusion was minimal impact on Ridge Road. An email copy was provided this afternoon to Code Enforcement. Most of the business will be drive-through.

Ms. Hicks questioned if the easement would connect to Wendy's. Mr. Markovich stated they are proposing access and working on an agreement with Wendy's.

**2022-002** (continued)

Chairman Elling questioned the required parking spaces at this location without a variance. Mr. Marcovich stated by code it is 3 parking spaces for every 5 seats. There are 40 proposed seats in the facility requiring 24 parking spaces. Currently there is a proposal for 28 parking spaces.

Chairman Elling referred to the 6 spots in the front, questioning if they were eliminated, would that change the need for the variance. Mr. Markovich stated while that is correct, it would make the project fall below the parking requirements with 22 parking spots.

Chairman Elling stated if the 6 spots were eliminated there would not be a need for a 3' variance. Mr. Markovich stated there would need to be a reduced parking variance. When orders are not ready, cars pull up to a waiting area, eliminating the 6 spaces would not allow for this option.

Chairman Elling stated Erie County provided a letter, but the correspondence does not specifically mention the variance request. The county has not provided any guidance on the setback and if they have an issue.

No comments were received from the public.

Motion by Elling, seconded by Hicks, to table the item until the February meeting to allow Erie County time to respond of the variance request.

Ayes: All

Noes: None

Motion Carried

Chairman Elling informed the Zoning Board members at the Town Board Reorganization meeting, the Town Board members stated they will be looking at members absences. An excused absence from the Chairman will now go before the Town Board to approve paying the member. Chairman Elling stated he has met with the Supervisor and explained in detail that members do work throughout the month leading up to a meeting.

Ms. Hicks stated her objection to the policy, as members do their due diligence on an ongoing basis. There is no way a member could attend/not attend the meeting without preparation. Members have continuing education requirements, frequently visit and contact properties and their owners. Code Enforcement is in contact with members throughout the month. This is an ill-advised provision adopted by the Town Board who appears to not have a solid understanding of what goes into being a member of the Zoning Board.

Chairman Elling referred to the property at 611 Indian Church Road and questioned the status. Mr. Busse stated fully engineered plans were submitted for the structure to be reinforced inside on the existing foundation.

**ADJOURNMENT**

Motion by Kapuscinski, seconded by Hicks, to adjourn the meeting at 7:55 P.M.

Ayes: All

Noes: None

Motion Carried

